Cleaners & Dyers case, and the other is Anderson against the Shipowners Association.

Mr. Jaureguy has gone back to 1842 in discussing the common law, and I am afraid we possibly set him a bad example in our brief by going back to the Sixteenth Century, namely, Dr. Bonham's case. In addition to that case I could refer your Honor to a case, I think, which is known as the case of the Ipswich Tailors, which was decided in 1614. It is reported in 11 Coke Reports 53-A. In that case it was held that a qualified tailor who had not received the guild's blessing could not be kept in his occupation.

I think that takes us back far enough in the common law to show that, as a matter of fact, the initial basis of the statute of monopolies from which we derived ultimately our Sherman Act was concerned primarily with guild practices, practices which involved a person's occupation.

The Court: I suppose you have read Henderson's
1176 book, haven't you?

Mr. Marcus: Henderson?

The Court: Henderson.

Mr. Marcus: I don't recall, your Honor. There is a series of articles—

The Court: Go get the book off my table against the wall. It is Henderson.

Mr. Marcus: There is a series of articles in the Yale Law Journal which appeared a number of years ago. The author's name is Jones, and I believe that he probably goes into the history of common law restraints more thoroughly than perhaps anyone else that I have had occasion to read.

Your Honor, I just want to take up one of the charges that Counsel for the defendants discussed at some length and said it was preposterous, and that is the charge that the defendants have interfered with commercial prepaid medical care organizations other than those sponsored or approved by them in obtaining hospital facilities for their members. Your Honor may recall that I read in open court letters from the Coquille Hospital, the Mast Hospital, and several other hospitals taking the position that because of the medical society policy they would not treat patients under the medical contracts of those hospital associations. Your Honor may recall also that there was testimony produced during the trial that in 1944 a group of officers of the medical societies here tried to get
1177 the hospitals to refuse to take patients under medical care contracts of the hospital associations. And

since this morning defendants' counsel again dealt at some length with respect to what had happened prior to 1941 and what has not happened, according to him, since 1941, I would like to again read from Exhibit 348, which consists of the Minutes of the Council of the Oregon State Medical Society of March 7, 1942, in which this appears:

"Dr. Pitman, President of Washington County Medical Society, reported that the Society had adopted the following resolution:

"Resolved that the State Industrial Accident Commission be respectfully informed that since February 1, 1942, the individual doctors of Washington County have not accepted tickets of hospital associations other than those recommended by the Oregon State Medical Society; that as a result of this action the individual workmen of Washington County who are under subcontracts for industrial accidents are locally serviced only by osteopaths and chiropractors or are forced to go to Portland for medical and surgical services; that we respectfully request the State Industrial Accident Commission to investigate whether such subcontracts are now satisfactory to the workmen and to the State Industrial Accident Commission.

"Upon motion duly made and seconded it was voted that this resolution be referred to the Committee on State Industrial affairs with instructions to take prompt
1178 and vigorous action with respect to the situation outlined above."

Now we come to an even more recent date. The date of this letter is October 11, 1948, and it is Exhibit 1609. It is a letter from the Oregon Physicians' Service to a Dr. Carol Meyers of Reedsport, Oregon.

"Dear Dr. Meyers: This is in reply to your letter in connection with our underwriting of certain individuals and accounts in the Reedsport area.

"As you possibly know, OPS is a doctor-owned association operating on a statewide basis. The County of Coos as well as three or four other counties in the state have established doctor-owned hospital associations to operate within the county only. OPS operates directly in all other counties in the state with the understanding that there will not be any direct competition with the county plans but, instead, will endeavor to furnish a more satisfactory service when and if subscribers need medical and hospital services on a reciprocal basis. We realize that Reedsport

is in Douglas County although the Coos Bay Association has customarily covered that area because of the affiliation of the doctors in Reedsport with the Coos Bay district medical society.

"We have therefore felt that because of our attempt to better the service facilities among the doctor-owned associations of the state we should not competitively solicit business in that area. We have, on occasions, con-
1179 tracted to cover branch offices or plants of firms in areas such as Coos Bay but have not contracted directly in that area with a firm. We could only suggest to the school system at Reedsport that they investigate the coverage of the Coos Bay Hospital Association.

"It is entirely possible that we could write coverage for employed individuals where the group could not constitute eligibility to the Coos Bay Hospital Association. If you have any such individuals in mind, you might suggest that they write us for information in this connection."

The Court: Is it your claim that there are some secret understandings?

Mr. Marcus: No, they are open, as far as these agreements not to compete.

The Court: What documents are those?

Mr. Marcus: We have a number of documents, and the defendants themselves, your Honor, have admitted that.

The Court: What are they?

Mr. Jaureguy: We admit that the doctors in Lane County do not compete with the doctors in Jackson County in selling their own prepaid medical care services.

Mr. Marcus: It is a little bit more than that. Of course, defendants' counsel keeps talking about the doctors in Lane County and the doctors in some other county. I am talking about entities, associations and corporations
1180 who have made these agreements among themselves.

The Court: Well, who? Whom are you talking about?

Mr. Marcus: Oregon Physicians' Service, which is a corporation, and the Oregon State Medical Society, which is an association, a separate entity.

The Court: There are documents between them that you rely on?

Mr. Marcus: That is right.

The Court: Yes. You know the numbers he is talking about, do you?

Mr. Jaureguy: Oh, I know the facts. He has stated the facts correctly in this respect.

Mr. Marcus: Your Honor, I think that is all.

The Court: Before you sit down, you said nothing about Mr. Jaureguy's position that the doctors are entitled to get into a competitive position and go into the business for themselves of prepaid medical care.

Mr. Marcus: I certainly do concede that they are entitled to go into that business competitively, and I never have argued to the contrary.

The Court: You haven't argued anything about it.

Mr. Marcus: That is right, because my position has been that I did not take exception to Mr. Jaureguy in that statement.

The Court: All right. Then what is your next step?

They are entitled to go into the business on a com-
1181 petitive basis, but what?

Mr. Marcus: But they are not entitled, one, to use that as a means for getting someone else out of that business; they are not entitled to use the means of boycotting and other means to compete with these associations; and they are not entitled, in the first instance and in the last instance, to agree among themselves to limit competition among themselves.

The Court: You mean a competitor cannot be an aggressive competitor?

Mr. Marcus: Sure, he can be an aggressive competitor, your Honor. And as in the AMA case, which dealt with that at some length, the point has been more than reached here which cannot be reached without coming within the Sherman Act, and that is the use, for instance, of coercive means such as disciplinary proceedings and the use of boycotts.

The Court: All right. Let's stop there. You say disciplinary proceedings. Mr. Jaureguy's position is that that is ancient history.

Mr. Marcus: Well, our position is that it is not, and we had Dr. Holzman on the stand and we have some documents to indicate that it is not since—

The Court: What is the name of the man you had on the stand?

Mr. Marcus: Holzman.

Mr. Jaureguy: Jerome Holzman.

1182 The Court: Who was he?

Mr. Marcus: From the Eagles. There was other evidence in some of the minutes since 1941, your Honor, where it was decided that action might have to be taken against certain persons involved in—

The Court: Minutes of what organization?

Mr. Marcus: Only of the county medical societies. I don't recall which, your Honor.

The Court: Multnomah?

Mr. Marcus: I really don't know, your Honor.

The Court: Does your associate know?

Mr. Weinstein: I don't know, your Honor.

The Court: You don't know offhand. Do you know of any such minutes?

Mr. Jaureguy: I have read the minutes. —I don't remember where they were—where they investigated it, but there were no threats of any disciplinary proceedings.

The Court: All right. Go on to your next point. They can't invoke these disciplinary actions. Now your next thing was they can't boycott.

Mr. Marcus: That is right.

The Court: What do you mean by that?

Mr. Marcus: They can't agree to use as a method of competition the boycott of another organization—to agree, your Honor. And it is important in this connection
1183 that what one man may do by himself is one thing, but the Sherman Act—I suppose it can be put this way—recognizes, and I think some Court may have used this language, "the potency of numbers." That is what happened here. It is one thing for an individual doctor to decide he will not deal with a hospital association but will confine his efforts to the prepaid medical care organization to which he belongs. It is another thing when a group agrees that they will do that and will exert the weapon of boycott against that other organization.

The Court: Just what do you mean by "boycott"?

Mr. Marcus: Not to deal with the association, or to deal with it in such a manner that the members of that association will be discouraged in continuing their membership in that association.

The Court: Now Mr. Jaureguy disagrees with you on the facts. He says that also is ancient history.

Mr. Marcus: Well, your Honor, all I can say is your Honor heard witness after witness testify, not as to 1936 but as to the late '40s what was happening, and the documents we have in evidence show that the boycott continued and has continued.

The Court: Now by "boycott" you mean that the doctors who are interested in the OPS, and therefore are competitors of the private hospital associations, will not deal with the private hospital associations?

Mr. Marcus: It is a little more than that, your
1184 Honor. We charge and the proof shows that it was through these defendants' policies that they have agreed to effect this boycott; it is in pursuance of the defendants' policies that this boycott is being waged. It might be that just because they were themselves engaged in similar activity that they had gotten together and made that agreement, but beyond that this is in connection with the Oregon State Medical Society and these other county medical societies.

And let me make clear, your Honor, and I think this has not been made clear by defendants' counsel, these county medical societies and OSMS themselves are not actually in the business of prepaid medical care. They regulated the policies and the like, but they themselves are not the entities which are engaged in the prepaid medical care business.

The Court: Now, take Klamath County, for instance. What is the situation there?

Mr. Marcus: As I understand the situation there, there is a boycott on the part of the doctors there with respect to the hospital associations; that that boycott has been abetted and encouraged and in part formed by these defendants; and that the Klamath Falls, or whatever the name is of the hospital association there, is one of the associations affiliated with the Oregon Physicians' Service, and not only does it agree and has it agreed to effect this boycott, but it has agreed not to compete with OPS and these other prepaid medical care organizations.

1185 The Court: I am glad to have your views, but that really was not what I wanted to elicit. You said a minute ago these groups of doctors are not themselves in the prepaid medical care business. Then I asked you what the situation was in Klamath County.

Mr. Marcus: I understand that there is a group of doctors which has an association of its own, but what I am talking about—

The Court: Didn't you just say these doctors are not in the prepaid medical care business?

Mr. Marcus: I am talking about medical societies, your Honor. I make that distinction, the medical societies as such; that is, the Multnomah County Medical Society is not in the prepaid medical care business.

The Court: No. No, there are many people belonging to the Multnomah County Medical Society who do not belong to the OPS.

Mr. Marcus: I assume that is so.

The Court: Well, you know it is so.

Mr. Marcus: Yes.

The Court: You know it is so. There are a great many that belong to the medical society who decline to belong to the OPS.

Mr. Marcus: That is right.

The Court: For one reason or another.

Mr. Marcus: That is quite true, your Honor.

The Court: But the doctors who do belong to the
1186 OPS, or who do belong to the group in Klamath County happens to be 100 per cent, I believe.

Mr. Jaureguy: That is correct.

The Court: All of the doctors who belong to the Klamath County Medical Society belong to their group, the prepaid group, whatever it is.

Mr. Jaureguy: The Klamath Medical Service Bureau.

Mr. Marcus: I suppose that is true. That is a little added feature of illegality, if I may put it that way. That is, there are a number of cases which have held that where a single entity has monopoly power, that entity is not entitled to adopt a policy of exclusion. If it didn't have that power, it could adopt. If your Honor is interested in cases of that sort, I can cite a number of such cases.

The Court: Now, the Klamath doctors—I believe this is in the record; I am not intending to talk out of the record—they spent nearly $500,000 of their own money in buying and improving the hospital. Do you think that is going too far?

Mr. Marcus: No, not at all.

The Court: Doing things like that?

Mr. Marcus: No, not at all, your Honor. I think that is very praiseworthy of them, to go ahead and build a hospital.

The Court: What do you think is wrong that they have done?

Mr. Marcus: To agree among themselves and with
OPS and these other defendants not to deal with
1187 any other hospital association or to deal with a member of one of these organizations.

The Court: Yes, but Mr. Jaureguy disputes you on the facts. He says that is not the situation.

Mr. Jaureguy: They have got it right in their bylaws, right in their bylaws.

The Court: What?

Mr. Jaureguy: The Klamath Medical Service Bureau has it right in their bylaws.

The Court: What?

Mr. Jaureguy: That they will all serve the commercial hospital associations unless the commercial hospital associations insist that only one will do it.

The Court: That is all I have to ask.

Mr. Jaureguy: Now, one thing Mr. Marcus and I agree on, I think. That is we are both admirers of Judge Learned Hand.

Mr. Marcus: That is right.

Mr. Jaureguy: And he has given your Honor some additional opinions of Judge Learned Hand. I would like to refer your Honor also to Judge Learned Hand's opinion in the Fashion Originators Guild case, 114 Fed. (2d) 80, on Page 84, which was later affirmed in the Supreme Court, 312 U. S. 457.

Now, Counsel—maybe I shouldn't say he misunderstood me. I am glad he brought this up, because what he says I said is not what I intended to say. I did not intend to say that the Sherman Act does not apply when the
1188 sale of services is concerned. I meant to say that the Sherman Act does not apply to persons when their own services are involved.

Now, with reference to the Atlantic Cleaners & Dyers case. In the first place, that is the case where the Supreme Court of the United States held that the words "trade and commerce" meant a different thing in Section 3 applying to the District of Columbia than they meant in Section 1 applying to interstate commerce. There it was not the sale of their own services; it was the sale of other persons' services. These were the proprietors of a cleaning and dyeing works. Well, you don't see the proprietor out sponging suits. It is somebody else that does that.

And that is the same District that five months ago decided the Realty Boards' case, and on the very ground that I stated. And that District Court in Washington said that that was the first case that had ever been decided, the first time it had ever been contended in court, that the Sherman Act applied to the sale by a group of men of their own services.

So I still contend that the Sherman Act does not apply when a group of men have combined together for the purpose of agreeing as to the circumstances and conditions under which they will render their services or the price that they will charge for their own services.

The Court: You have been claiming that for the Apex case, but the Apex case says that was not the type of monopoly that the Sherman Act was directed to.

1189 Hunt all through the pages and pages of the Apex case—and there are a lot of them—and you finally come to where they say that, historically, that wasn't that type of monopoly; surely it had a monopolistic effect but, historically, it was not the type of a monopoly that the Sherman Act was directed to.

Mr. Jaureguy: That is one of my shortcomings, your Honor, one of my weaknesses. When I read through a case with one object in mind, to find a certain aspect of it, I miss other things that are in the report.

The Court: Chief Justice Hughes disagreed. He said that was the type of monopoly that it could be directed to, but it did not make any difference because he only got one other vote.

Mr. Jaureguy: I want to go on to another subject and that is these hospitals. Your Honor will recall the testimony regarding the McAuley and Mast hospitals. Those were hospitals, little private hospitals, run by certain doctors, and when they wrote their letters to—these doctors have all of their patients in these hospitals, and that is all there is to it, but that was not a refusal to treat patients.

The Court: You can't get a doctor in Portland—and I am looking at some in the back of the room now—that will let you go to the hospital you want to go to.

Mr. Jaureguy: That is correct. That is one of the weaknesses of our hospital system. I do not see that it can be remedied in any way. If I suffer a serious

1190 injury on the street and I am hauled up to a certain hospital, there is just a certain list of doctors I can have come in, so I have been told, and treat me because each hospital feels, and the doctors, too, for certain purposes of internal management, that one group of doctors will work in this hospital and another group in another. Some, in times past, have been on the staffs of two or more, like Dr. Ullman, whom we are supposed to have threatened with all kinds of stuff, according to Counsel. He was on the staffs of two hospitals.

The Court: If I wanted to go out to a certain hospital, for instance, which is the only really modern hospital in Portland, I couldn't go there unless I happened to have a doctor—

Mr. Jaureguy: Providence Hospital.

The Court: Yes. I did not mention the name, but I am willing to give it that advertising. I could not go there unless I happened to have the right doctor.

Mr. Jaureguy: I understand that conditions in recent years have become, in that respect, worse than they used to be, and that there is a limit on the number of doctors, for efficiency purposes, on the staff of the hospital and so, for that reason, they sometimes exclude men just because they happen to have other hospital connections.

The Court: I know the reason for that.

Mr. Jaureguy: I have tried to find out, and that is one reason I have found.

1191 The Court: You are making the argument that there is nothing sinister in that situation because in some of the outlying counties there is a special arrangement between the doctors and a certain hospital. Is that the argument you make?

Mr. Jaureguy: Yes, that is right. These are not general hospitals. They are little private hospitals that a group of doctors have.

Then, the reference to '44. That is the testimony of Mr. Nelson of the Portland Sanitarium, regarding a meeting that he attended where one or two doctors did suggest or urge, whatever you want to call it—

The Court: I went back and read that testimony the next day. It didn't seem very clear to me.

Mr. Jaureguy: What the doctors were suggesting or urging was not that they do not take patients but that they do not take tickets.

The Court: I thought you were talking about the man who said they had a meeting out here on the East Side and there was some talk about Blue Cross. Wasn't that Nelson?

Mr. Jaureguy: This involves the Blue Cross.

The Court: What?

Mr. Jaureguy: This involves the Blue Cross, but it was not that a patient should not be admitted, but admitted on a private basis, and I wanted to cross-examine him as to their experience with hospital associations and

1192 your Honor thought that should come in our case, so I did not question him on that. That is the only instance, and that was immediately rejected. This change of policy was a rather gradual shift—I think I stated about somewhere between the end of 1940 and the middle of 1942, or something, but, anyway, the 1948 matter is something, of course, entirely different. That is the allo-

cation of territories, that one county medical society is not going to go into another county and sell services. That is an entirely different matter.

The Court: You realize, of course, that there is a wide difference between you and Mr. Marcus as to the facts.

Mr. Jaureguy: Not a very wide one.

The Court: To listen to the two of you, it sounds to me like you are talking about two different factual situations altogether, which, it seems to me, will require close briefing from the record of testimony and extended references to particular documents on which, particularly, Mr. Marcus relies. He says that there are documents there which prove right today there are things going on that you say do not exist at all.

Mr. Jaureguy: Yes. First, I want to mention that Washington County business, and then I will take that up for a minute or two. That was a communication from Dr. Pitman in Washington County in March, 1942, in effect that the Washington County doctors were not taking tickets. That resulted in some unfortunate situation involving some of the State Industrial Accident Commission
1193 patients, and what the State Society Council did there was to say, "You must take prompt and vigorous action to take care of the situation." What that action was does not appear, whether the "vigorous action" was to tell the Washington County Medical Society to change their course or something else. No threat of expulsion, nothing whatever along that line involved there; nothing involved there but the taking of tickets; that is all.

Of course, as I have said time and time again, doctors today are not taking tickets. If Mr. Marcus has anything else in mind going on today under the name of "boycott," I would like to know it. That is all he is referring to that is taking place now, just not taking tickets.

That, of course, is not ancient history. That is going on. Some doctors do. Some that refused to take tickets in 1940 are taking them now. In Jackson County—I have traced a few letters there—and the same way in other counties. In Astoria, in May, 1939, they resolved they would take tickets from the Industrial and National but not from the doctor-sponsored organization, the Multnomah County Industrial Health Association. Employers testified that they learned in 1944 or 1945 that the doctors were not taking tickets. That was a long way removed

from any threat of expulsion or threat of that kind. They do not have anything in the nature—

The Court: What is it you have to defend against in the agreement between the Medical Society, the State Society, and OPS? I have not read that closely.

Mr. Jaureguy: I do not have anything to defend against, your Honor. The facts are, as Mr. Marcus has suggested, that there is an agreement among the doctors of the state and prepaid medical care plans—and/or other prepaid medical care plans, I think is right, that if the doctors in one county organize a prepaid medical care plan that medical care plan will not go over into another county, that society will not go over into another county to sell their services there.

The Court: What references are there in the agreement to a competitive private hospital association?

Mr. Jaureguy: Nothing at all.

The Court: What documentary matter is there since 1941 that points the gun at the private hospital associations?

Mr. Jaureguy: Absolutely none, unless Counsel is referring to an article in Northwest Medicine, which, under the masthead, is merely the opinion of the person who wrote it, in which he condemns them and says they are chiselers and things of that kind, but aside from that there isn't any.

The Court: One of my doctor friends, whom I happen to know—I won't mention his name—was referred to on the witness stand as seeking to proselyte a chap here that came up from Astoria or someplace. Do you remember that? He said sooner or later the OPS would clean up the field.

1195 Mr. Jaureguy: You are not referring to Dr. Holcomb?

The Court: It was a working man from down on the Coast. You don't happen to remember that?

Mr. Jaureguy: Well, I don't doubt that doctors have said that. As I have said, I don't doubt that there are doctors in the state who would like to see OPS a monopoly and think it is going to be a monopoly, but they are certainly mistaken.

The Court: But you do not think there is evidence that justifies a finding that there is a conspiracy to make it a monopoly?

Mr. Jaureguy: No. No, there isn't; absolutely not.

The Court: You have a motion here, which is to dismiss, haven't you?

Mr. Jaureguy: That is correct. I assume your Honor agrees with me that, in deciding that motion, your Honor weighs the evidence; you do not merely determine whether there is a scintilla or anything of that kind; you weigh it just as you would the evidence on both sides.

The Court: I do not have to go that far. I am going to reserve decision.

Mr. Jaureguy: Yes, I understand, but when you finally decide it—

The Court: I will reserve decision on it until after the case is completed.

Mr. Jaureguy: Before 1948 there was some con-
1196 tention or difference of opinion among judges as to whether that was true, but now it is very clear that the judge weighs the testimony, weighs the evidence. Of course, I may be out of turn.

The Court: Here is that book. I have been told that the first chapter, about 50 pages, is one of the best discussions that has ever been had of the inception of the Sherman Act and as to the extent it is intended to draw on the common law. That is a book that Mr. Mundorff provided me with.

Mr. Jaureguy: I wonder if I might make this request, and that is if your Honor takes considerable time on this that we could have— What I am thinking about is that we would like a couple of weeks' notice if we are going to have to produce witnesses.

The Court: You are; I will tell you that now. I am reserving decision on the motion until the completion of the case.

Mr. Jaureguy: You want us to produce our witnesses?

The Court: That is right.

Mr. Jaureguy: I didn't understand that.

The Court: So, we will resume the trial on December 13th at 10:00 o'clock in the morning.

Mr. Cohen: Your Honor, I would like to ask permission to remove the documents down to Room 508 in this courthouse.

The Court: You lawyers agree on that yourselves.

Mr. Cohen: Thank you.

The Court: Good-bye, Gentlemen.

(Adjournment)

1197 IN UNITED STATES DISTRICT COURT

[TITLE OMITTED]

Portland, Oregon
Monday, January 23, 1950
10:00 o'clock A. M.

BEFORE:

Honorable Claude McColloch, Judge.

APPEARANCES:

Mr. Philip Marcus, Special Assistant to the Attorney-General.

Messrs. Isidore Cohen, Gerard G. Galassi and Robert H. Weinstein, Attorneys, Seattle Office, Anti-Trust Division.
Appearing for Plaintiff.

Mr. Nicholas Jaureguy (Cake, Jaureguy & Tooze), and Mr. John J. Coughlin (Griffith, Peck, Phillips & Coughlin), Attorneys for Defendants.

1198 Pursuant to adjournment and continuances granted, the Court reconvened in the above-entitled cause at 10:00 o'clock A. M.

The Court: Proceed.

Mr. Jaureguy: I was going to ask about the defendants' exhibits, whether they are in court.

The Court: The Clerk will know. He has a question to ask, Clerk.

Mr. Jaureguy: Are the defendants' exhibits here in the courtroom?

The Clerk: They are right there in front of you.

Mr. Jaureguy: Thank you.

The Court: If they had been any closer, they would have bitten you.

Mr. Jaureguy: That is right.

The Court: Yes.

Mr. Jaureguy: We can proceed with our testimony, then?

The Court: Yes.

DEFENDANTS' TESTIMONY

Mr. Jaureguy: Call Dr. Durno.

EDWIN R. DURNO was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

1199 Direct Examination

By Mr. Jaureguy:

Q. Your name is Edwin R. Durno? A. It is.

Q. What is your business or occupation? A. Practice of medicine and surgery.

Q. Where do you practice? A. Medford, Oregon.

Q. How long have you lived in Oregon? A. All my life, except for a period of three years during the war and about seven years in medical training.

Q. What was your position during the war? A. In the last war I was a Major in the Medical Corps of the U. S. Army.

Q. Were you in some other wars besides the last one? A. I happen to be a very young veteran of World War I.

Q. What was your medical training, Doctor? A. I spent four years at Harvard Medical School, graduating in 1927. I then spent three years as an intern and resident in the Massachusetts General Hospital in Boston.

Q. Since then you have been practicing in Medford continually? A. I have practiced in Medford continuously except for the war years, since February 10, 1930.

1200 Q. So you have been there, aside from those years, twenty years? A. Twenty years.

Q. Are you a member of medical societies? A. I am.

Q. Of which societies are you a member? A. A member of the Jackson County Medical Society, the Southern Oregon Medical Society, the Oregon State Medical Society and—

Q. —the AMA? A. Yes.

Q. Do you hold any official position with the State of Oregon? A. I am at the present time the President of the State Board of Medical Examiners.

Q. How long have you been a member of the board of Medical Examiners? A. Two years.

Q. Did you ever have any association or connection, either by way of treating patients or otherwise, with any commercial hospital associations?

Mr. Marcus: Objection, your Honor, on the ground of relevancy, whether or not this doctor has any connection with any of the commercial associations. He is not on trial.

Your Honor may recall that towards the end of our presentation I stated I would like, at some time, to have an opportunity to argue at some length as to the evidence that the defendants might seek to introduce with respect to the experience of individual doctors with the commercial associations. If that is the aim of Mr. Jaureguy's
1201 question, then I would like to argue it at this time.

Mr. Jaureguy: I would like to say this, your Honor: It was in connection with exactly that statement of Counsel, that Counsel made when we were cross-examining some other witnesses, that your Honor requested Counsel, at the conclusion of plaintiff's case, to set forth those legal theories that they had. I want to object, having four or five witnesses from out of town, to interrupting their testimony to have that argued now, as much as I would like to hear it.

The Court: I will hear Mr. Marcus. Doctor, you may step down.

Mr. Marcus: Your Honor, the drift of this case is whether the defendants named have conspired to do certain things and have done those things which we have alleged that they have conspired to do, and which we have alleged that they have done.

It is our position, and I will refer to authorities which have dealt with this same situation, that to bring into this case at this time any evidence which goes to the experience of other individuals, that goes to the question of justification, good motives or the like, are improper and irrelevant to this case because, as the Courts have held, the commission of a crime is not justified by good motives.

In the AMA case the defendants sought to show that the group hospital association in that case was not only illegal but also that the defendants believed that the
1202 group hospital association was illegal. They sought to introduce evidence with respect to both those things, and that evidence was excluded by the Court. In addition, they sought to show that the quality of medical care given by the group hospital association was inferior to that which the defendants thought was desirable. That also was excluded. Both on a motion for a new trial and in their assignment of errors defendants specified at some length error in the exclusion of this type of evidence. This exclusion was expressly upheld when the case reached the Circuit Court of Appeals, and the report of that case is in 130 Fed. (2d).

The Court: Was that case tried with a jury?

Mr. Marcus: Yes, your Honor, it was. The defendants also in that case asked the Court to make certain instructions to the jury, and some of those instructions, proposed instructions, went to the type of operation undertaken by the group hospital association, and the Court denied those proposed instructions.

In addition to that case, a very similar situation arose in the General Motors Corporation case, which was an anti-trust case, reported in 121 Fed. (2d). In the trial court—

The Court: Page?

Mr. Marcus: 121 Fed. (2d) 376, Pages 404 to 405.

In that case the defendants sought to bring in as witnesses a large number of dealers, automobile dealers, to testify that they had not been coerced by the defendants in the case, and that they had not been discriminated
1203 against, and this is what the Circuit Court said in that connection:

"The position of the appellants on this point is that they offered the excluded evidence . . . to refute the inference which otherwise might have been drawn from the testimony of the Government's dealer witnesses that the defendants had agreed upon the course of conduct represented by their treatment of those dealers."

The Court said that "Obviously, in proving the conspiracy, it was not necessary to show that all dealers in fact had been discriminated against or coerced."

The Court said:

"The basic issue was whether the appellants had conspired to restrain the trade and commerce of the dealers. It was proper for the Court to exclude all evidence not relevant to the issue or merely remotely relevant to the issue. The excluded evidence or offers of proof consisted of the failure of appellants' dealer witnesses to experience coercive treatment at the hands of appellants. Such evidence was not logically relevant to the issue and had no rational tendency to resolve the question of conspiracy . . .

"Indeed it is manifest that a showing of noncoercion in one instance does not disprove an affirmative showing of coercion in another instance. In addition, the offers of proof failed to show that the appellants' dealer witnesses had knowledge of the treatment accorded other
1204 dealers or that a similarity of circumstances otherwise existed as between them and the Government's dealer witnesses. . . .

"Nor as a matter of logic does it change matters to ground relevancy of the offered evidence on the theory that it tends to refute the Government's evidence showing that a conspiracy to restrain the trade of dealers had been formed. If the excluded testimony fails to refute the Government's evidence of coercion, it is difficult to conceive how it would refute the Government's evidence showing that a conspiracy had been formed and that some overt acts of coercion had occurred in pursuance thereto. . . .

"Stated differently, evidence that the appellants had not restrained the commerce of some dealers would not prove that there was no conspiracy to restrain the commerce of dealers."

There is also the case of the United States against Anderson, 101 Fed. (2d) 325, in which a similar situation arose. That case involved a conspiracy charge against certain labor unions and certain members of those unions with respect to acts of violence which had been committed in connection with attempted stoppage of railroad movements.

The defendants sought to prove that, in addition to those acts which were alleged to have been committed by defendants, similar acts had been committed by per-
1205 sons other than the defendants, and that evidence was excluded by the Court.

We have cited, your Honor, in our original brief, at Page 14, a number of cases which have held that benevolent motives do not excuse an anti-trust conspiracy.

As we see it, evidence of the sort sought to be elicited here can be only with respect to certain things. By that I mean, your Honor, what we conceive defendants to be seeking to elicit from this particular witness, and other witnesses perhaps, in the same category, that is (1) that perhaps they have had difficulties with some of these commercial associations and that that has been the basis of their opposition to these commercial associations.

Well, in the first place, as we have stated, the cases hold that because of their doing what they have done is irrelevant to the fact whether or not they did what we charge them to have done.

In the second place, for these witnesses to take the position that they have been unfairly dealt with by the commercial associations is to bring an issue into this case which is not at all relevant to the charges of the complaint. Instead of having this case revolve around the question

of whether or not these defendants have conspired to do what we have charged them to have done, we will then have a series of separate cases in which, on the one side, defendants will seek to show that the commercial associations have improperly dealt with certain individuals not
1206 defendants in this case, and we would be forced to show either that that is not so or that in many instances they have dealt properly with the medical profession in this case.

1207 Mr. Marcus: (Continuing) Now, as I have said, those are purely collateral issues, and if we are to embark on that sort of thing this case will undoubtedly last a great deal longer than it should properly last.

In closing, I want to say again, your Honor, this sort of question has come up time and time again in anti-trust cases. Well, it is a favorite sort of defense on the part of defendants to try to show that they had some justification for what they did, and invariably that defense has been stricken down, and I would refer your Honor again especially to cases we have cited on page 14 of our brief.

Mr. Jaureguy: I think I have kind of gone over this before, but I will just briefly summarize my theory on it. In the first place they have charged coercion, and as I argued at the close of the plantiff's case, they haven't proved any coercion. Now, I will admit that if under the decisions which he cited, the first two of them—that is the American Medical Case and the General Motors Acceptance Corporation case—that if a group of individuals or associations use coercive tactics to prevent somebody from doing something which that person has a right to do that they cannot defend those coercive tactics by claiming that they had some pure motives.

Now, I want counsel to get the idea out of his head that there is any such purpose in calling any witnesses
1208 that we call. That isn't the purpose of calling Dr. Durno and that isn't going to be the purpose of calling any witnessses. Now, I thought that is what this case was about. And assuming that counsel still believes that there was some coercion practiced by any of the defendants or doctors in Medford—and we are talking about Medford now—assuming that he still believes there is some evidence of that, then this evidence is admissible for the purpose of rebutting that. And the question is whether there was any—as I say, on that hypothesis—whether there was any coercion used, and I propose to show by this wit-

ness, and by other witnesses, that there was absolutely no coercion or even suggestion by the State Medical Society or any medical society that they do what they did do in refusing to accept tickets of commercial hospital associations.

Now I take it—I am going to further outline the evidence we are going to produce because maybe that will avoid necessity of counsel jumping up and objecting again. I take it that just to put a witness on the stand and ask him "Were you coerced?", and he says, "No," that that isn't the limit that we can go to, that we are entitled to go; so we are going to have this witness and certain other witnesses who have refused to take tickets to explain why he refused to take tickets. And he will explain his own reasons for not taking tickets and those reasons will negative any idea of coercion whatsoever. And that is one of the purposes of this evidence.

1209 I gathered, however, in counsel's argument at the end of counsel's case that either they have abandoned their theory that there was any coercive tactics on the part of the medical societies or the individual defendants and have jumped over to another theory, or possibly that they are depending on two alternative theories. The second theory that they seem now to have, which isn't mentioned in the complaint, is that if there was no coercion at least there was an agreement on the part of the doctors in the State or of a county that they wouldn't take tickets. And as I tried to explain to your Honor on two different occasions in the past, the American Medical Association case—and I may add, the General Motors case—says that that can be done as long as the societies do not use coercive tactics. To use the words that were used three times in the Court of Appeals in the American Medical case, the medical societies may, if they wish, endeavor to achieve this objective of they do it by legitimate persuasion and reasoned argument.

Now, I think that when we get through with our witnesses here, including this witness, the Court will be convinced that what they did and what the doctors in the State did was not the result either of coercion or of agreement among the doctors of the state, or of argument or persuasion on the part of any of the defendants, but it was their own individual choice; not overlooking the fact, as

1210 I stated in my opening statement and again in my argument, that there were groups of doctors in com-

munities—and Medford was one of them—that at one time entered into a concert of action. It so happens that in Medford it was in November and December of 1938.

Now with respect to this particular witness, in the more definite statement that the Government filed they named a large number of doctors that have been subjected to specific coercion, compulsion and threats and other epithets of that kind, and therefore have not been able to practice medicine in the manner in which they wished to practice medicine, and this doctor was one of those on that list. After they had put in their case they admitted that by saying those on that list willingly or unwillingly—I don't remember the wording and I may not quote it exactly—that willingly or unwillingly have followed into the plan of the defendants. Now as far as this particular witness is concerned, they have introduced in evidence some written documents, letters and things of that kind, that this witness wrote in which he said that he wasn't going to take tickets or work for the National and work for the Industrial, or things of that kind, and now certainly that could only have been admissible, could only have been offered on the theory that here is a victim of this state conspiracy, and, having introduced that evidence concerning this doctor, now they say we can't even rebut
1211 the evidence that they themselves have introduced.

So I say on any of those grounds the testimony of Dr. Durno and the testimony of the other doctors that we propose to call is clearly admissible.

Mr. Marcus: It seems clear from what counsel for the defendants have just stated that what they intend to do is just what the General Motors case said they could not do, try to show that as to one individual doctor or ten individual doctors no coercion was effected. Furthermore, as counsel has stated, quite truly our case is not merely upon coercion but upon agreement also, and there again we cannot see what the relevance is on either of those matters of this particular doctor's relationships with any commercial association, and, as I said before, your Honor, this is going to get us into a tremendous number of collateral issues, and for those reasons we respectfully ask that this type of evidence be excluded.

The Court: The evidence will be admitted subject to objection.

Mr. Jaureguy: Will you take the stand, Dr. Durno.

(Witness resumes the stand.)

Direct Examination (Continued)

By Mr. Jaureguy:

Q. The question that I had asked you, Doctor, was whether during your practice at any time you have
1212 in any way had any association or connection with any commerical hospital plan, either by way of treating their patients or taking tickets or anything of that type. First, I will say that we have been using the expression "taking tickets" in this case. Do you know what the general meaning of that is in the medical profession? A. Yes, sir, I do.

Q. And I will ask you whether you have had— A. Over a long period of time I took tickets for both the National and the Industrial Hospital Associations.

Q. And what period of time would you say that covered? A. Well, I began the practice of medicine early in 1930 in Medford, and shortly after that time I started taking tickets, and as my practice grew I took more tickets, up until January, 1939.

Q. Now, was there an organization formed in Southern Oregon known as the Southern Oregon Medical Service Association? A. There was.

Q. And did you have anything to do with the organization of that? A. I did.

Q. Who were the moving spirits who organized that? Can you tell us? A. It was formed largely as a result of—

Q. First, who were the moving spirits? Will you
1213 answer that? A. I should say the moving spirits in the organization of the Southern Oregon Medical Service Association was Dr. James Hayes of Medford, Dr. Charles Lemery of Medford, and myself.

Q. And will you tell us why that organization was formed? A. Well, that organization was formed because over a long period of years there had been a growing dislike for the things which we had to accept because we worked for the lay-owned hospital associations. There were things which we detested, the things which intimately concerned our practice of medicine. Those things might be enumerated as follows: No. 1,—

Mr. Marcus: Your Honor, I object unless this witness is asked whether he knows this of his personal knowledge. He is talking about "We."

The Court: Yes. Just go ahead and tell what you know about it.

Mr. Jaureguy:

Q. Yes. I wish in doing this, Doctor—I may later come back and cover that feature of it—that you would try to make clear among the things that you are going to relate which of them fall within your own experience and which of them fell within the experience of others that were related to you but that nevertheless were reasons for the formation of this association. A. Well, they all concerned me personally.

Q. Well, that answers it. A. Except—I will say with one exception, and that is that for a long period of
1214 years I was considered one of the fair-haired boys for the lay-owned hospital associations and as such I took their tickets and was accepted by them. However, there was a closed panel in Medford of which half the doctors were on the panel and half were not on the panel, roughly speaking. I was on the panel, and it concerned me in that respect. The fact that many doctors were not on the panel and the patient didn't have a free choice of his physician that he might desire concerned me from the general point of medicine. That might be the reason why I would say "we". Now, I personally quit working for the lay-owned hospital associations I would say for three reasons: First, the remuneration which we received was not in fair accord with the practice and the services that I rendered; secondly, it became increasingly evident to me that any major procedure which was carried out or hoped to be carried out in Southern Oregon was urged to come to Portland for that treatment or for the carrying out of that procedure. Those are two very real reasons. They would try to bring the patient to Portland. If they could not bring the patient to Portland through a third party, which I objected to strenuously, I would have to give the data, laboratory data I had at my command, and in many instances I would have the answer from a layman, "Well, if the patient's blood count is as high in the morning as it is this afternoon or this evening, why, you can go ahead and operate." And that is not the way I like to prac-
1215 tice medicine. For these three reasons I seriously objected to working for the lay hospital associations. Along with the two other men that I mentioned, through discussions held in the scrub rooms and around the doctors' offices, we decided that we had to do something about it. So the three of us decided that the logical thing to do was to call the rest of the doctors in and ask what their feel-

ings were in the matter, what their opinions were relative to the continuance of working for the hospital associations who were so obviously mistreating, at least myself.

Mr. Marcus: Now, you Honor, may I ask that that last remark be stricken?

The Court: Motion denied.

Mr. Jaureguy:

Q. And before you go to that, you say that you had to submit to laymen in Portland your diagnoses and opinion and then have them pass on it? A. I did.

Q. Now, was that just occasionally or was that frequently? A. Through a period of time any major surgical procedure that was done, except in the case of an extreme emergency, we were supposed to call up Portland and get permission to do that major surgery procedure.

Q. You mean call by telephone? A. Call by tele-
1216 phone and talk the matter over with whoever answered the telephone. As far as I know I can't ever remember talking to a fellow practioner in asking for that request.

The Court: I want you some time during this case to put in here what the practice is by the State Industrial Accident Commission on matters like this. Does a doctor working for them on one of their cases have to go through somebody else, and is it a lay person or a professional person?

Mr. Jaureguy: I wouldn't be surprised if we couldn't develop that right now.

The Court: That is one of the things I am interested in.

Mr. Jaureguy:

Q. Have you taken care of cases for the State Industrial Accident Commission? A. I have worked for the State Industrial Accident Commission for the past twenty years. I have cared for, I suppose, several thousand of their cases, minor and very major cases, and never at any time in the twenty years have I ever had to call Salem or talk to any layman or any doctor in the State Industrial Accident Commission office for permission to do anything.

Q. And, now, you named two other things here. What about the matter of questioning your bills? What was the experience with the State Industrial Accident Commission? A. The State Industrial Accident Commission has a fee

schedule which in our opinion—it has been changed from time to time through the years as conditions have changed —and in the opinion of myself I think it's been fair
1217 and I have been very happy to accept it.

Q. Well, what about the hospital associations?

The Court: Let me interrupt again. What is the general situation in the profession? Do all the doctors do work, and, if so, do they do it willingly for the State Industrial Accident Commission?

A. Yes, sir, they do. There is an unlimited open panel for patients who come under the State Industrial Accident Commission.

The Court: Are there any doctors or group of doctors that reject that service?

A. There are none to my knowledge.

The Court: I mean rendering that service.

Mr. Jaureguy:

Q. By that I assume that you mean that they haven't rejected any of that service by reason of the fact that it is a State Industrial Accident case? A. Actually you are asking me something which I don't know for a fact, but it is my impression, and, as far as I know, no doctor has rejected the opportunity of working for the State Industrial Accident Commission.

Q. And the second part of the Judge's question was whether they did it willingly. A. As far as I know, your Honor, they did, yes.

Q. Now, during these years did these commercial hospital associations furnish you with a similar schedule
1218 of fees that you could operate under, or how did you happen to have trouble with them on your bills that you testified about? A. Well, it's quite a long story, and actually is the No. 1 primary reason which was the motivating force in our organization of our little local Southern Oregon Medical Service Association. It was a customary procedure, and I think almost every doctor in the State has the same experience I have, of sending into the National Hospital Association or the Industrial Association at the first of each month a list of names of calls, the number of calls after those names, and the amount of money involved, and in return usually in the same month

we would receive back a check saying in effect, "You will find enclosed check received for the following services"—

Mr. Marcus: Pardon me again. I want to object to the term "we" and ask that the witness be confined to stating his own experience.

The Court: I have instructed him to do that. I understand he is just talking about the things he knows about personally. Is that right, Doctor?

A. That is correct, sir.

Mr. Jaureguy: When he says "we" he means he and his office help.

A. We would receive these little pink slips back and a check would be enclosed saying in effect "You will find enclosed check received for services rendered," and there
1219 would be the names of these people that we had sent in with the amount of money that we had billed the association for, and then there would be these famous familiar little asterisks after at least 50 per cent of the names, I would say, and at the bottom of that schedule it would say "As per schedule", so that in reality we were hardly ever receiving, or I would say I probably never received the amount of money I thought was justly due me; and that was one, and I would say perhaps one of the main motivating influences for my endeavor to form the Southern Oregon Medical Service Association.

Q. I want to hand you Defendants' Pre-trial Exhibits 2514 to 2566 and ask you if those slips and asterisks there are typical of what you have just been talking about?

I will say to the Court that these are not from this doctor's files. They are from another doctor's files in the same county, and I just want to ask him if this is the type of thing he is talking about. A. Yes, sir. The only difference is that he has more asterisks after his than I had after mine.

Q. Well, now, did you have a schedule from these hospital associations that you followed when you sent in your bills, or how did that difficulty arise? A. I never saw an official schedule from a hospital association. From time to time the business managers or the claim agents make trips
into Southern Oregon and there was a sort of a
1220 slip-shod general understanding that you were to get $2 for a first office call and $1.50 for each successive office call, but actually at my disposal I had no definite fee schedule in writing.

Q. Well, when you sent in your bills would you send in the amounts? A. I would send it in on the basis of $2 and $1.50, and if there was some special things that had to be done, why, I would add to that, and, in fairness to the hospital associations, it was some of these things that had some of the asterisks after them, which to me were very fair.

Q. Now, you also said, I think, that one of the reasons was the practice of the hospital associations to have the patients brought to Portland. A. Yes, sir.

Q. Well, did they ever do that in your experience in cases where you felt that you personally were qualified to take care of the patient? A. Not only did that happen, but also the patient involved felt that I was capable of taking care of them, and in some instances after coming to Portland they decided that they would rather have me do it, and against the advice of the association in Portland came back to me for the surgery.

Q. Well, what happened if the patient insisted, without coming to Portland, that you take care of the pa-
1221 tient? A. Well, I have one case which I will never forget. A patient—do you want me to go ahead and tell this case?

Q. Yes. Of course, you don't need to give the name of the patient. A. I had a lady who had a lump in her breast. This lady had been an employee of the Medford M. & M. Store, which is a department store, for ten months. This lump was a small lump, and I did a biopsy of it. Dr. Warren Hunter at the University of Oregon sent back a pathological report of a carcinoma of the breast, and I did a radical operation, section of the axilla.

The Industrial Hospital—it was a Industrial Hospital case. The Industrial Hospital called up the owner of the store and urged him to send this woman to Portland where she might have the care of a specialist. They wrote a letter, which I have in my file, to her urging her to come to Portland where she could receive the excellent attention that she could only get here.

Q. If I could interrupt, I would like to hand you Defendants' Pre-trial Exhibits 2576 and ask you whether that involves the— A. This is an exhibit of the case which I am describing.

Q. Yes. A. And this here is a letter of the 11th of February, 1936 saying that they would be very glad to have her come to Portland for such attention as her condition

1222 may require and telling her where to report.

And after the surgery—

Mr. Marcus: Pardon me. Your Honor, may it be understood that we have the same objection with respect to documentary evidence as we have with respect to the oral testimony?

The Court: It is so understood.

A. And on April 6th, after the operation and their refusal to pay me or to pay the hospital, they have suddenly decided by letter that this particular case does not come under their coverage.

Mr. Jaureguy:

Q. Did they refuse to pay Dr. Hunter? A. Yes, sir. Dr. Hunter sent a letter, I believe, to the lady saying—

Mr. Marcus: Objection again, your Honor, on the ground that it is hearsay.

The Court: Tell what you know.

Mr. Jaureguy:

Q. If you saw the letter. You never talked to Dr. Hunter? A. No. I talked to the lady. She is alive and well.

The Court: Did you see the letter?

Mr. Jaureguy: Yes, I saw the letter.

The Court: Did you see the letter?

A. No, sir. I can only tell what the lady said. Not the letter from Dr. Hunter.

The Court: You can't testify then. He is just tell-
1223 ing what the lady told him.

Mr. Jaureguy: Your Honor, I did not see that letter.

A. Anyhow, they first wanted this lady to come to Portland for any attention she might need. She wouldn't come to Portland. She wanted me to operate on her. I operated on her. I submitted a bill to the Industrial Hospital Association. They refused to pay it, did not pay it, and never have paid it to this day, and yet the lady came under contract ten months prior to the finding of a very small lump in her breast. One might argue, as they perhaps might argue, that she had the lump when she came under the contract, but it is hardly likely a woman will have a very small lump in her breast for ten months.

Mr. Jaureguy:

Q. Now, when the Commerical Hospital Associations were down in your county to endeavor to enter into contracts with employers for the treatment of their men did they consult you about it before they got those contracts? A. No, sir.

Q. And what was the attitude of the doctors with respect to that?

Mr. Marcus: Objection, your Honor, on the ground of irrelevancy.

The Court: Overruled.

Mr. Jaureguy:

Q. What I am getting at is, did the doctors approve of the laymen selling their services without their con-
1224 sent or broker their services, we might say? A. Well, I would say, first of all, that whole thing was an evolutionary affair. And to begin with the doctors were sort of led and they were led up to a certain point, and finally I and other doctors began to see the error of our ways and we commenced to object. That is what I am talking about.

Now, you say, I think, that you and Dr. Hayes
1225 and Dr. Lemery were the ones who started the association. A. Yes.

Q. Then what did you do by way of organizing? A. After the three of us talked it over, along the way of informal discussions with other doctors, we called a meeting one night in Dr. Hayes' office and we asked ourselves: "What are we going to do about these existing evils that are disturbing our practice?" So we decided to go into the hospital association business and form one of our own in the free open market, in competition with National and Industrial hospital associations.

Q. Was it just organized by three of you or were there others? A. I can't give you all the details of organization, but we employed an attorney and drew up some—called a general meeting of all doctors in Southern Oregon—I mean Jackson County—and called a preliminary meeting and had a chairman and elected a president and officers and adopted bylaws and started—hired a business manager and set up offices and started to do business.

Q. At some later time did it go out of business? A. Yes, sir. We had a very unhappy four years, four or five years,

in which we ran the association—because we had an abundance or wealth of medical material and a lot of doctors to take care of it, and we could not make
1226 ends meet.

Q. I don't think you gave us the date when that was organized? A. I don't know whether I can or not. I would have to guess. I think—I don't know. It was sometime in the middle '30s.

Q. About 1936? A. I would say yes. I would say yes to that question, though I am not certain, but I think it was 1936, '37 or '39.

Q. You say you had pretty hard sledding? A. We had pretty hard sledding because we had the marginal contracts, which were not good paying contracts. We had a limited intake and the cost of doing business was high and, consequently, we had tough sledding; in other words, we could pay everybody but the doctors, and during that time we were paying ourselves, I believe, 20 or 30 per cent of our fees.

Q. What do you mean by marginal contracts? A. Well, in the hospital business there are good contracts and there are bad contracts. The lay associations who had laid the groundwork down there were ahead of us, and the logging contracts, lumber contracts and other such contracts lay outside the city limits, I would say, where it is rather difficult for people to get in to the doctors' offices every time they have a sore throat or a pain in their side or something of that sort; they would not run in to the doctors.

Well, in order to get any volume at all we took the so-called marginal contracts, which would include beauty operators, department stores, or smaller contracts involving six or eight or ten people, contracts that were
1227 close in, and every time they wanted some medicine —in those days we were prescribing medicine along with the contracts,—and every time they wanted some milk of magnesia they would run to the doctor's office and say, "Doctor, I want some milk of magnesia," and the doctor would put down an office call and write a prescription for milk of magnesia and they would go and get their milk of magnesia for nothing.

Mr. Marcus: Your Honor, I move to strike out all of this testimony. This is an illustration of what I was just saying as to how far afield we can go in this case. This question of what happened to this particular association is utterly irrelevant in this case.

Mr. Jaureguy: I can give your Honor the reason for it very quickly.

The Court: Well, go on and complete your record. State your reasons.

Mr. Jaureguy: The reason is to answer the charge in the complaint that the doctor-sponsored hospitals, hospital associations, carried on cutthroat competition and that is the reason they only got a percentage of their fees.

The Court: We will follow the same practice we did before and work from 10:00 to 12:00 and from 2:00 to 4:00, and we will take always a ten-minute recess.

The answer may stand, subject to the objection.

1228 (Recess.)

Mr. Jaureguy:

Q. You told us that during the first three or four years the Southern Oregon Medical Service Association just got the poorer or margin contracts. Why didn't you get the good ones? A. Because the National and Industrial hospital associations had them, and I will tell you the reason why I think we didn't get them.

Mr. Marcus: Objection, your Honor, unless the witness personally knows.

Mr. Jaureguy: It is his own personal opinion.

Mr. Marcus: I think that is purely speculative.

The Court: Answer. Let's get along.

A. I think the reason why we didn't get them was because the key men who were instrumental in getting those contracts received favors at the hands of the lay-owned hospital associations.

The Court: What do you base that on?

A. From information which came to my attention that suites of rooms, whiskey and flowers were at their disposal when they came to Portland.

The Court: All right.

Mr. Marcus: I move to strike all that out.

The Court: That is proper. Rooms, whiskey and flowers, I think he said.

Mr. Marcus: How does he know, except from rumors?

The Court: You are going to ask him that on cross

1229 examination.

Mr. Jaureguy: Dr. Moore testified about the same things.

Q. Then, after you formed the Southern Oregon Medical Service Association or Bureau, did you continue to take care of patients of commercial hospital associations? A. Yes, we did.

Q. Did you take their tickets? A. We did.

Q. And sent in bills? A. We did.

Q. About how long did that continue? A. I continued taking until the first of January, 1939.

Q. And then you stopped? A. I did.

Q. Then, do you know whether other doctors stopped at the same time? A. I think a lot of doctors stopped at the same time. I don't know that all the doctors did, but I know that some of my friends did.

Q. Then, do you recall in September, 1940, the Southern Oregon Medical Association passing a resolution of any kind with respect to whether doctors should take tickets?

I will hand you Defendants' Pre-Trial Exhibit 2701 1230 and ask you to look at that. A. Yes, sir, I read this.

Q. Subsequent to that time did doctors belonging to your association resume the taking of tickets, do you know? A. I can only tell you my impression. I think there were doctors taking tickets prior to that time and afterwards.

Mr. Marcus: Object to that, your Honor, because this is pure hearsay.

The Court: He may answer.

A. I think I did.

Mr. Jaureguy:

Q. Both prior and subsequent to that resolution in the fall of 1940? A. Yes, sir.

Q. Calling your attention to Defendants' Pre-Trial Exhibit 2702, the minutes of the Jackson County Medical Society of September 24, 1941, and calling your attention to Item 6,— A. Yes, sir.

Q. —that item, if you will notice, provides that the secretary shall send a letter to the Industrial Hospital Association, asking that all of the doctors in that county be placed on their list, and also send a letter to the California-Oregon Power Company? A. Yes.

Q. Do you recall that those intsructions were given? A. To the best of my knowledge, yes.

Q. I hand you Defendants' Exhibit No. 1854 and ask you

whether this is a photostatic copy of a letter sent
1231 to the California-Oregon Power Company? It is not a very good photostat. A. I would have to assume that it was. This I believe to be a copy of the roster of physicians in Jackson County at that time, and I think it is fair to presume that this is a copy that was sent to them.

Q. What about you personally? How long did you state you continued taking tickets? Until the 1st of January, 1939? A. Yes, sir.

Q. Have you taken them since? A. I have not.

Q. Why haven't you? A. Because of the original reasons why I quit taking them, and I have somewhat limited my practice in later years and I now see people by appointment, and I see all my patients strictly on an equal basis. They all come in as private patients, and I treat them as such.

Q. The reasons you gave a while ago for forming the Southern Oregon Medical Service Association, were those the reasons? A. Yes.

Q. And also for your quitting taking tickets? A. Yes, sir.

Q. Those are the reasons you do not take them now? A. Those are the reasons I do not take tickets now.

Q. Have you ever refused to see a patient because the patient was a member of a commerical hospital
1232 association? A. No, sir.

Q. How do you handle those cases? A. As a matter of fact, in most instances I do not even know whether a patient is a member of a hospital association or not. As I just got through saying, I treat all my patients as private patients, and I render them a private bill. Very often when I finish with a patient they will say, "Well, I come under the National Hospital Association," and then say, "Well, my secretary will be very happy to render you a bill and you can present that bill to the National Hospital Association for their approval," and that is the way that I conduct my business now.

Q. Do you give more information on these bills than you do on your patients' bills, patients who are not members of these associations? A. When that custom was first started, there was very little asked concerning those patients. They usually went over to the office of the National Hospital Association across the street, presented my bill, got their money and came back and paid me, either then

or in the reasonably near future. Now they are in the habit of sending out quite a lengthy questionnaire concerning the patient.

Q. Who sends it out? A. The National Hospital Association gives it to the patient, and the patient in turn—

Mr. Marcus: I object, your Honor.

1233 A. —gives it to me.

Mr. Marcus: Just a minute, Doctor. He just testified that he hasn't had any dealings with these hospital associations and now he is testifying as to the procedure they follow.

A. I am very sorry. I do not have any dealings with them.

Mr. Jaureguy: He has not testified he has no dealings with them.

The Court: Continue. Ask a question, Mr. Jaureguy.

Mr. Jaureguy:

Q. I will ask you to proceed in explaining how you handle cases where your patients are members of a commercial hospital association, as distinguished from private patients? A. I treat them as private patients. I give them a bill which they, in turn, submit to the National Hospital Association. In order to facilitate that patient getting his money so that I can be paid for my services, I have been in the habit of giving a brief resume of his case as I see it, which is what I would do for any other private patient. I have had no direct contact with the National Hospital Association professionally at all. I have never talked to them personally about any case.

Mr. Jaureguy:

Q. You mean never, during your pratcice? A. No, I mean since I stopped working for them.

Q. Then you were telling about this questionnaire. Did you fill that out for them? A. I filled it out for the patient, to facilitate the patient getting his money.

1234 Q. Do you do whatever you or the patient thinks is necessary in order that the patient may obtain payment? A. I cooperate with the patient to the best of my ability.

Q. Earlier in your testimony you told about these commerical hospital associations in 1930, when you were on their panel down there, requiring patients to come to Port-

land, you say, for specialists. A. Actually, they came to see other panel physicians which they chose to call specialists.

Q. I am going to ask you about a few names—and I might say, your Honor and Counsel, I am taking these names from Plaintiff's Exhibit 1853—and ask you whether the persons whose names I read are now practicing medicine in Jackson County.

First, Dr. Robert W. Clancy? A. He is no longer practicing medicine.

Q. Is that merely recently that he stopped, or has it been some time? A. It has been several years.

Q. He has not practiced medicine for several years in Jackson County? A. He has not.

Q. Bert Gilpin, Dr. Bert Gilpin? A. He is not practicing medicine in Jackson County, has not since 1941 or 1942.

1235 Q. Dr. R. E. Poston at Ashland? A. Dr. Poston has not practiced medicine in Jackson County for several years. I think he went to South America during the war.

Q. Dr. W. F. Roney of Medford? A. He is no longer living in Medford and has not practiced in Jackson County, —is not practicing in Jackson County.

Q. Was there a period of time that you were practicing in Medford that you were not on the panel of these hospital associations? A. Well, as I told you, the development of contract practice was an evolutionary affair. It began before I arrived in Medford in 1930, and I believe started with one physician caring for the contract and then a second physician was included and then a third, and perhaps I was the fifth or sixth and as my practice grew and it included more and more patients who came under contracts of the hospital associations there was enough pressure from letters and from employers that they put me on their panel and I was then on their panel until 1939.

Q. Prior to the time you came on their panel were you permitted to take care of any patients at their expense? A. I cared for patients and sent individual bills in, but in connection with any major procedure, of counsel, I would always have to call up and ask permission.

Q. Have you preserved all the records that you had during the time you have been practicing medicine?

1236 A. Well, I had a fire which destroyed my home, and a number of very early records were destroyed

in that fire. I had put them up in the attic. All my correspondence since about 1936 I have at my disposal.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. Have you turned over any correspondence between 1936 and 1939 to counsel for the defendants? A. Yes, sir; some of that is exhibits, I believe.

Q. Could you tell us again in what medical societies of the State of Oregon— A. Will you speak a little louder, please?

Q. Could you tell us again in what medical societies in the State of Oregon you have had membership? A. Jackson County Medical Society.

Q. Give us the approximate years? A. 1930 to 1950; president of that society in 1941.

Southern Oregon Medical Society, 1930 to 1950; president in 1949.

Oregon State Medical Society—I can't tell you the exact —exactly the number of years I have been a member of the State Medical Society, but for a long number of years.

Q. Prior to 1936 would you say? A. I would have to look in the record. I don't know. I think about that
1237 time. I was a member of the Executive Council of the State Medical Society. Yes, I think in the middle '30s I was a member of the State Medical Society.

Q. You stated you were President of the Jackson County Medical Society in 1941? A. 1941 or '42, I believe, because that was the year I went in the service.

Q. Could you tell us what other offices you have held with that particular society and the approximate date? A. Jackson County?

Q. Yes. A. Well, actually, we had a rather permanent secretary and there are not many other positions to be held. I don't ever recall being vice-president. I was president, as I told you. I probably was a member of some committees.

Q. You were a member of committees? A. I suppose from time to time, as all doctors are. I can't recall exactly what committees or at what time.

Q. Taking the Southern Oregon Medical Society— A. You are not mistaking the Southern Oregon Medical Service Association for the Southern Oregon Medical Society? There are two.

Q. No, I am dealing now with the Society. A. With the Society, yes.

1238 Q. Did you hold any offices with that Society? A. Only the office of president.

Q. And about when? A. Last year, 1939. I was president last year.

Q. Were you a member of various committees from time to time of that Society during this period? A. Well, as a matter of fact, that is a rather loose organization which meets once a year, in May of each year. It is largely a professional society, in which we get speakers from all over. I don't think I have ever been any member of any society committee. I might have been. I don't know.

Q. Taking the State Medical Society, have you ever been an officer of that Society? A. Not as a member of the State Society. I told you I was a member of the Executive Council of the State Medical Society at some time during the middle '30s. I can't tell you exactly what year.

The Court: Do you think you practiced for about six years before you became a member of the State Society?

A. I am not sure, your Honor. I think maybe so.

The Court: Why would that be?

A. Because in 1930 the State Society was a rather loose organization, and there wasn't any request that you join the State Society. We were away off down in Southern Oregon and we just didn't join. I think there were quite a few of us that were not members. As a matter of fact, I

1239 am not at all sure that maybe I didn't join in 1932 or '33, but I know for a while I probably was not a member.

The Court: How about the AMA?

A. The same thing existed. It is a kind of a loose organization, and you paid your dues and got the Journal of the American Medical Society, and many doctors do belong and many don't.

Mr. Marcus:

Q. Could you tell us about when you were on the Council of the State Medical Society? A. As I just said, it was sometime in the early—in the middle '30s. I can't tell you exactly the year.

Q. Were you on any committees of that Society from

time to time? A. I can't tell you. I don't remember. I presume I must have been on some committees, yes, but I can't tell you what they were.

Q. Were you ever a delegate from the Jackson County Medical Society or the Southern Oregon Medical Society to the State Society? A. You are—you become automatically a delegate to the State Society in your post-president year, so I would be automatically a delegate one year after I was President of the Jackson County Medical Society, and I am a delegate to the State Medical Society this year, coming from the Southern Oregon Medical Society, to the State Society this year.

Q. Since the time you have been practicing, have you been taking the State Medical Journal, Northwest
1240 Medicine? A. Yes.

Q. Have you received any other publications of the Society? A. Well, I believe Northwest Medicine is the official publication of the State Medical Society. Isn't that right?

Q. I understand that is so. A. Yes.

Q. You are on their circulation list, are you not, so that when they send circulars to doctors you receive the circulars? A. I receive Northwest Medicine.

Q. I am asking you about circulars that may have been sent. A. As a matter of fact, I can't tell you because my secretary sifts that out and puts what she thinks I ought to read on my desk and I really can't tell you.

Q. You say—

The Court: Do you suppose she ever makes mistakes and gives you the wrong thing to read?

A. I find that out once in a while.

Mr. Marcus:

Q. You say you are on the State Board of Medical Examiners, is that correct? A. That is correct, sir.

Q. Is it not true that the State Medical Society recommends names for those posts? A. I don't know. I believe that it is the policy of the State Medical Society to recommend a group of names from a particular community
1241 or a particular district or area in the State of Oregon and from that group of names the Governor selects the man that he wants to appoint to that position.

Q. Doctor, you say that you first started to practice in

Medford about 1930? A. I started to practice in Medford February 10, 1930.

Q. That was during the depression, wasn't it? A. No, sir, it was not during the depression.

The Court: Had not hit yet.

A. It had not hit yet.

Mr. Marcus:

Q. About when would you say that it hit the Medford area? A. It hit badly in 1932. Our bank failed down there.

Q. I suppose many of your patients were patients who were subscribers with the commercial associations, isn't that right, Doctor? A. As I previously told counsel for the defense, as my practice grew I developed a larger and larger clientele who happened to fall under contracts with the lay hospital association, so I presume in 1932 I had more patients than I had in 1931, and the same is true of 1930.

Q. Is your answer "Yes" to my question that in this period you had a considerable number of patients— A. My answer is yes. Yes.

Q. Would you consider during this period if these
1242 patients had not been covered by their prepaid medical care contracts they would not have been able to pay you your fees? A. I think so.

Q. All of them? A. You know that no doctor ever receives all his fees.

Q. In other words, it has been your experience, in some instances, you have not received your fees? A. In all cases —hospital associations as well. That was my major reason for quitting that practice, because I did not receive my fees from the Industrial and National.

Q. You also did not receive fees from patients whom you were treating as private patients, is that not true? A. My collections are not 100 per cent, no.

1243 Mr. Marcus:

Q. Now, Doctor, you stated, you have given two reasons for discontent for the lay-owned hospital associations. Now, I gather from them, one has been with respect to remuneration, and your criticism there seems to rest with their not having given you full payment for the statements that you have sent in from time to time from 1930, during 1930 to 1939, that period. Is that right? A. That is correct; that is one reason.

Q. Have you had occasion to take up with the associations particular items that they have rejected either in full or in part? A. Before or after 1939, which?

Q. Before. A. Before 1939. Yes. I certainly have on many occasions.

Q. And has it not been your experience that in some instances they have refused to give you any more than they originally allowed you, and in some instances after you contacted them they did give you some more than they originally allowed you? A. Well, in many instances I would say that they would stand pat with their original payment. I would think that in some instances they might come up to my request.

Q. Doctor, do you know whether with respect to some of these items which they rejected whether or not the rejection was based upon their considering that the particular treatment or the particular ailment did not come
1244 within their contract? A. I cited you the example of the lady with the carcinoma of the breast which they first of all tried to get to come to Portland so that she might get care, and in a subsequent letter, which is included in the exhibit, they denied because they said she did not come under their contract. And I explained that point previously.

Q. So that your answer would be Yes, that is, in some instances the basis of their rejection of payment was that they considered the particular ailment or treatment did not come within their contract? A. Oh, yes, that was a familiar trick.

Q. Well, Doctor, you have referred on direct examination to the case of a woman who had a lump on her breast. You stated that you prepared to operate her and she wanted to have the operation performed by you and that the Association insisted that she be treated by a specialist in Portland. A. That she come to Portland where she could get better attention, yes.

Q. And that is your statement? A. As a matter of fact those letters are right in the exhibit.

Q. I am asking you, Doctor. That is your statement? A. Let me—could I have that exhibit?

Q. Well, I am asking you, Doctor. A. Well, I can answer you by showing you and reading these letters to you.

1245 The Court: Bring him the letters.

A. I told you about this lady.

The Court: Don't read the letters. You may refresh your recollection, but we don't want to take the time to read them.

A. This lady received a letter to come to Portland for further attention. Another letter to her employer to the effect to come to Portland for such attention as her condition might require. And then a letter to me, months later, saying "This is to advise you that the case you operated on did not fall within the contract the Association had."

Mr. Marcus:

Q. Now, Doctor, I will read one of the items contained in this correspondence which you have just looked at. This is a letter from Industrial to you dated April 12, 1936. A. Yes, sir.

Q. "We acknowledge receipt of your letter of April 9 regarding the case of (blank). As is our usual practice when a case comes on that is doubtful as to whether it is covered by our medical contract service we call such patients to Portland for examination and investigation before authorizing treatments at our expense. As soon as we received word from you and from the M. & M. Department Store that this patient contemplated having surgery done we immediately requested that she be referred to Portland for examination and further attention. Instead of complying with that request you immediately proceeded
1246 with the operation. The condition for which you operated does not come under our medical contract and we have so informed all parties interested."

Now, is it not true that what Industrial was trying to do there was to determine whether or not this condition which the woman had was a pre-existing condition so that they would know whether or not she was covered by the contract? A. It is not true.

Q. Well, did you not just say on direct examination that a point of dispute between you and the association was as to whether or not that was a pre-existing condition? A. That letter would indicate that, but here is a woman who had been under contract for ten months who had a tiny lump in her breast, which was pathologically diagnosed by the pathologist at the University of Oregon as having carcinoma of the breast, sitting down at Medford waiting for a controversy between myself and a lay-owned hospital association in Portland as to whether I could operate on her.

If you will read those two letters that precede your April the 12th letter, one to her, I believe, and one to her employer, who happened to be her uncle,—and, furthermore, she has told me that she received a telephone call directly from the association itself,—

Mr. Marcus: Well, objection, your Honor.

The Court: Overruled. Continue.

1247 A. —requesting her to come to Portland where she could get the excellent treatment which she required. You read those two letters that precede your April 12th letter and you will see that both of those letters don't say anything about whether she comes under the contract. It asks her to come to Portland to receive the attention she needs.

Q. You yourself made the statement on direct examination, said that was a matter of dispute between you and Industrial. A. I have just got through saying we were disputing that fact when the patient sat there with a cancer of the breast.

Q. I have a letter from you dated April 9, 1936 to the Industrial Hospital Association. A. Yes, sir.

Q. In which you said this was a small lump, slightly larger, if any, than a pea, and one certainly that could not have existed prior to her contract which she had been under approximately ten months. A. That is correct.

Q. It is true then that a matter of dispute between you and Industrial on this case was as to whether this was pre-existing? A. In each case it is a dispute.

Q. I am asking about this case, Doctor. A. The particular case was a dispute, yes.

Q. And there is nothing in this correspondence, is there, Doctor, which states that if she comes within the con-

1248 tract you could not operate? A. No, I don't believe there is any there. Just asked in those letters, asked her to come to Portland.

Q. All right. Now, Doctor, you say that another bone of contention was the fact that you were required to get authority from laymen, I believe you stated, before— A. That is right, yes, sir.

Q. —before you could go ahead with any surgery or extended treatment, is that right? A. Any major treatment.

Q. Now, Doctor, is it not true that in many of these cases where such treatment is required and was required in your estimation that considerable sums of money could also be involved in respect to payment for the treatment?

A. Well, that depends on what you mean by "considerable sums of money".

Q. Well, more than a first-office visit, certainly. A. Yes. Whatever the going fee for an appendectomy, let us say, yes, that was involved.

Q. And you think it is improper for a pre-paid medical care organization to have the doctors check with them before they commit the association? A. I certainly do. I believe that any contract 300 miles away from its source should not have to call up a layman in Portland to get permission to do an acute appendix.

1249 Q. When you say "permission", that permission relates to being liable for the expense involved in the treatment, is that not correct? A. Well—.

Q. They never attempted to tell you not to operate if you wanted to go ahead and operate? A. Oh, yes they have. I have a letter in my file now—

Q. As a private patient? A. No, not as a private patient. No. I could operate as a private patient, yes. And I since have done so, since '39.

Q. And you think that applies, that statement of yours, applies to whatever pre-paid medical organization might be operating in the State of Oregon? A. No. We don't work that way.

Q. When you say "we"— A. I am talking about the Oregon Physicians Service.

Q. Are you a member of that? A. I am.

Q. How long have you been a member? A. Well, since its inception—well, I became a member when I came back from the Army.

Q. Now, on direct examination you stated you treated all your patients on a private-patient basis. A. I do.

Q. Is that true as to the Oregon Physicians Ser-
1250 vice? A. That is true. I would state at least half the time I never know they are under a hospital association. That applies to those people who come in with National Hospital slips, Industrial, just the same. Some of them when they get through may say, "Well, do you want this?", and that is the first intimation that I have that they are under OPS, National or anything else.

Q. Well, when an Oregon Physicians' Service subscriber comes to you do you charge that subscriber any fee you deem proper under the circumstances or do you confine yourself to the fee— A. We have a fee schedule.

Q. Just a minute. —to the fee schedule of the Oregon

Physicians' Service? A. We have a fee schedule which we think is a fair fee schedule and are happy to accept, and actually is a little more than I charge my private patients who come under the National Hospital at the present moment. That fee schedule happens to be that way.

Q. Then your answer is with reference to the Oregon Physicians' Service patient that you charge them according— A. According to the fee schedule.

Q. —and not as a private patient? A. I charge them according to the schedule of the Oregon Physicians' Service.

Q. Now, Doctor, you stated that you were one of the doctors in the Medford area who about 1939 formed
1251 the Southern Oregon Medical Association. A. No. I said I was one of the doctors in the Medford area that helped, was instrumental, in originating, starting the Southern Oregon Medical Service Association. It was not in 1939. It was prior to '39. I am not certain what year, somewhere in the late middle thirties, '36, maybe '37.

Q. And, Doctor Hayes was one of your collaborators? A. Dr. Hayes was the second one and Dr. Lemery was the third one, yes, sir.

Q. You stated you had an attorney who was employed to help in the formation of that association. Do you recall who was the attorney? A. I think that the attorney was a Mr. R. R. Hammond, who was killed on Anzio beach-head.

Q. And did you have a lay business manager? A. Yes, sir.

Q. Now, going back to these commercial hospital associations, you knew, did you not, Doctor, that they had as officers and as members of the staff licensed members of your profession?

Mr. Jaureguy: As officers? That is true of one of them.

A. I don't know as I get the question. Could you ask me again, please?

Mr. Marcus:

Q. You knew, did you not, that these so-called commercial hospital associations had either as officers or as
1252 members of their regular staff licensed physicians? A. Oh, I think yes, I think I knew that there were doctors associated with both of these lay-owned hospital associations, yes.

Q. At the home office? A. Yes, sir, yes, sir.

Q. And did you— A. But I never—may I interrupt—I

never at any time in all my association with them ever talked professionally to them concerning any patient.

Q. It is merely an assumption on your part— A. An assumption on my part—I happen to know they are part of the organization.

Q. Pardon me, Doctor. Kindly allow me to finish the question. It is an assumption on your part, is it not, that when you talked to some lay person with one of these commercial hospital associations as to whether or not you should go ahead and treat a patient under their contract, that he had not conferred with members of the staff who where doctors? Is that an assumption on your part? A. That is an assumption. I think it was merely a quick decision on his part over the telephone, yes, that is correct.

Q. Did you ever write to them about these matters? A. Oh, I have written reams of letters.

Q. And do you assume the same thing there? A.
1253 I would assume that the lay individual, the claim agent or the secretary who was giving me emergency, temporary permission or refusal had no direct contact with any medical member of either staff, yes.

Q. And it is true, is it not, that generally these lay persons you talked to were concerned as to whether or not the matter you broached to them came within the coverage of a particular contract? A. That is the guise on which it always fell back to, yes.

Q. Now, Doctor, you stated that during the period of operation of the Southern Oregon Medical Association the doctors associated with that association were paid about 20 to 30 per cent of the fees. A. That is right.

Q. And you think that was comparable with what these doctors had received from the commercial associations? A. It was not, but we had freedom which we didn't have. That compensated, that was the extra compensation.

Q. But the extra compensation did not consist of extra remuneration? A. Not in terms of dollars and cents. You can't measure the practice of medicine entirely in terms of dollars and cents.

Q. Isn't it true, Doctor, that during this period during which you built up your practice that a large part, that
practice was built up because of patients coming to
1254 you in the first instance because they were subscribers under these hospital associations? A. That is an untrue statement.

Q. On what do you base that statement? A. Because I know that the large majority of my patients were not. It

so happened that I didn't take care of that particular kind of patient to any great extent.

Q. But you have just said that you received more and more of those kind of patients. A. I did, of course. When I started I had Patient No. 1. And the second day I was happy if the second man came in, and still the overall—

The Court: Did you get a patient the first day?

A. No. And my wife was my secretary for a long time. I mean, the overall percentage of my patients coming under the coverage was not a large percentage.

Mr. Marcus:

Q. Now, Doctor, you have been in frequent attendance at the meetings of the Jackson County Medical Society, have you not? A. Yes, sir.

Q. And you attended meetings from time to time of the Council of the State Medical Society? A. I have.

Q. And at those meetings from time to time officers of the State Medical Society have spoken, have they
1255 not? A. Well, of course, the members of the—the officers of the State Medical Society are members of the State Council, so they are always present now. Occasionally—

Q. Let us go to the Jackson County Medical Society. A. Occasionally, and I should say rarely, and it wouldn't average once a year, perhaps every three years, we would have as a guest some President who wanted to come down and see our society.

Q. You say the average would be about once in three years? A. I would guess not oftener in every three years would we ever see anybody of the Oregon State Medical Society.

Q. How about officers of the American Medical Society? A. As far as I remember I can never recall a member paying an official visit to the Jackson County Medical Society from the American Medical Association.

Q. And can you recall whether at the times when these officers of the State Medical Society appeared the question of contract practice of medicine was discussed at the Jackson County Society meeting? A. Was there a member of the State down there?

Q. At times when an officer of the State Medical Society was present. A. I believe that—now, this again—it's a long time ago and I am only quoting this from memory, but I believe Dr. Sears, who was a past-President of the State

Medical Society, one time appeared at a meeting
1256 of the Jackson County Medical Society, and I believe that Mr. Coughlin, who was attorney for the State Society, had appeared once or twice. And that is only my impression. I am not certain about that.

Q. Dr. Durno, I call your attention to Exhibit 958, which is comprised of the minutes of the Jackson County Medical Society of June 20, 1938. Now, according to those minutes you were present. A. Yes.

Q. The guests included Dr. R. G. Leland of Chicago, Director of Medical Economics of the AMA. A. Well, I am merely in error. I didn't remember him being there. He didn't make much impression on me apparently.

Q. He didn't make much impression on you? A. Apparently not.

Q. The minutes go on to say, "Dr. Leland in his closing remarks branded the lay-owned associations as a brokerage form of medical care." It would appear that there was at least one meeting at which this question of contract practice of medicine was discussed and at which a representative of the AMA was present. Is that not so? A. From the minutes of that meeting I think that is correct.

Q. Now, Doctor, you have stated that you believe the reasons that you did not get, that is your association, the Southern Oregon Medical Services, did not get more accounts in that Medford neighborhood was because of
1257 the commercial associations furnishing rooms, flowers, and apparently hard liquor to accounts. A. Yes sir.

Q. Would you state in detail on what you base that? A. I will only state this, and that is all I know: To begin with, I said "I believe", and secondly I said "It is my impression." I have for friends in the Rogue River Valley many of the men who were instrumental or who were responsible for giving those contracts to the lay-owned hospital associations. They are personal and social friends of mine. And it isn't at all unusual for a couple of those men to have more than perhaps what might be called a social amount of alcohol, and in our controversies at cocktail parties during that period of time it was quite a common matter for this witness and those employers to drink together, and when we drank enough we always got around to one thing and that was the matter of this contract practice with the lay-owned hospital associations, and they told me in their cups, if you please, that that was the situation as it existed. Now, that is all I can tell you.

Mr. Marcus: Well, your Honor, I move to strike all testimony with respect to—

A. You asked me, so I told you.

The Court: The motion is denied.

Mr. Marcus:

Q. Now, Doctor, you state that you had no direct
1258 contact with the hospital association since 1939. A. I think not, sir. Now—do you want me to mention maybe one or two exceptions that I can remember?

Q. Well, you have made a statement on direct examination that you had no contact with them. A. All right. May I qualify that and explain the one thing that I did have?

Q. Go ahead. A. All right. I had a patient that was an employee of the California-Oregon Power Company. This is all within the last six months. You may have this or may not. He had a large mass in the left side of his abdomen. He demanded or had to have surgery as an emergency matter. I saw him as a private patient. I operated on him. It was impossible to tell at that time whether he had a malignancy or a ruptured diverticulum. I did a bowel resection of the left colon. I brought the bowel up through the abdominal wall to the left side of the abdomen. I then took care of him over a period of three or four months. I then brought him into the hospital and did an end-to-end anastomosis. I then dropped the bowel back into the abdomen and repaired his herniation. The man through all that enjoyed an uneventful convalescence. He is back on the job. And when I sent him his bill he in turn turned it over to Mr. Seth Bullis, who is the go-between between the hospital association and at least me, and
1259 the Industrial Hospital Association, Dr. Chester Moore, then wrote me a letter and asked me if I would write to him and tell him why this bill amounted to $514. In fairness to the patient again, and in order that the patient might get his money, which they were objecting very strenuously to paying, I enumerated what I have told you now. Dr. Moore then wrote me saying, congratulating me on the surgery, and saying it was a very good case, and he paid the bill.

Q. And that is the only instance? A. As far as I remember that is the only instance. There might be other instances, such as the Leon instance, but if my memory is correct that is correct.

Q. And you have refused not only to accept tickets from these associations but also checks? A. I have refused to accept checks, yes, sir. I think I accepted one check from a man who was deceased, and I believe that is the only check that I have accepted. As a matter of fact, this $514 check was sent to me and I in turn sent it back and they reimbursed the patient, because he was still under my care.

Q. Now, Doctor, you have mentioned dealing with laymen in the so-called commercial hospital associations. Have you ever had any dealings with the Prudential Hospital Association? A. No, sir, I don't recall ever having a patient for them.

Q. You know, do you not, that was operated under
1260 a doctor, Dr. King? A. No, I don't know a thing about it, as a matter of fact, because I don't think they have any contracts in Southern Oregon, and as far as I know I have never had a patient come under their contract.

Q. But— A. I don't know anything about it.

Q. Does that mean that you would be willing to treat patients under the Prudential contract? A. You are asking me something I don't know anything about. I don't know anything about their contract. I would see a patient that came into my office. I don't refuse to see patients who need emergency care, and I see other patients by appointment. It would make no difference to me. I would see that patient as a private patient.

Q. But you would not see that patient as a subscriber of Prudential Hospital account? A. I would see him in the same capacity I see any other patient in—

Q. But you would not accept a ticket? A. I have never accepted a ticket for Prudential. I don't know anything about them.

Q. You do accept OPS treatment requisitions? A. I do.

Q. Well, to that extent your statement is quali-
1261 fied, is it not? A. What is that? I don't get you?

Q. I say, to that extent your statement is qualified. There is at least one pre-paid medical care organization whose tickets or requisitions you do accept? A. I accept tickets of OPS, and that is the only organization I have accepted tickets from.

Q. Doctor, what has your experience been with respect to payments by the OPS? A. They have been very satisfactory. The OPS has been very fair. We have a perfect doctor-patient relationship. There is no delay in doing the

things which are necessary to be done, and my fees are adequate.

1262 Q. Would you say that there is no requirement that you contact them before giving extended care or performing major surgery? A. We have local autonomy. We have an organization setup so, if I see a patient with an acute abdomen, I simply call in a consultant and go right ahead and operate, just the same as I would with any other patient.

Q. I don't quite get that picture. You say you call in a consultant? A. You have to have an assistant to help you operate in Oregon; doing major surgery, I call my assistant in for him to check over the patient and, if he agrees with me, go right ahead and operate on the patient, just the same as any other patient.

The Court: Is that required by law?

A. I don't know whether it is required by law, your Honor, or whether it is a requirement of the American Hospital Association.

The Court: How long has that been so?

A. It has always been so, as far as I am concerned.

The Court: Since you came here and started practice?

A. Yes. In all major procedures we must have a doctor assistant.

The Court: In the surgery?

A. In the surgery.

Mr. Marcus:

Q. Is it your statement, then, Doctor, it is not necessary to contact OPS at all? A. No, sir, it is not.

1263 The Court: Will your redirect be extensive?

Mr. Jaureguy: It will be very brief, your Honor.

The Court: Are you about through, Mr. Marcus?

Mr. Marcus: I have about ten minutes' examination, your Honor.

The Court: Let's finish with him before we recess, then.

Mr. Marcus:

Q. You never had any complaints about filling in the reports of these commercial associations, have you? A. You mean have they ever complained to me about my not—

Q. You have never felt that was an undue burden, have you? A. I have always been fair with them. I have always tried to be fair when I work for them.

Q. Doctor, you say you have a high regard for the way OPS operates? A. Yes.

Q. Would that be true to your knowledge with respect to the other local physician-owned prepaid medical associations that are affiliated with OPS? A. I know nothing about the other prepaid medical groups. I only know about my own. I can only tell you, as far as we in Southern Oregon are concerned, we are very happy with it; we think we have done a good job for the people, and for medicine, and for ourselves.

Q. You know, however, all of these doctor-sponsored prepaid medical care plans have been approved by
1264 the Medical Society, do you? A. I don't know. I think OPS was approved by the State Medical Society. Isn't that so?

Q. You know that is true of the other doctor-sponsored plans, too, do you not? A. I don't know.

Q. It appears in the literature you have gotten from OPS? A. Well, as I told you, my secretary segregates the literature. I possibly do not read it all.

Mr. Marcus: I would like to have something identified here.

The Court: Is that something new?

Mr. Marcus: Yes.

The Court: Let Mr. Jaureguy see it in order to save time.

Mr. Jaureguy: I would like to see it more fully later. That is sufficient for the present.

The Court: This is taking a new turn. We will recess until 2:00 o'clock.

(Photostatic copy of letter dated April 24, 1947, Pacific Hospital Association to Dr. W. B. Shepard, thereupon marked Plaintiff's Identification No. 2044.)

(The Court thereupon recessed until 2:00 o'clock P. M., January 23, 1950.)

1265 Court reconvened at 2:00 o'clock P. M. Monday, January 23, 1950, pursuant to recess.

(Letter dated February 9, 1939, Dr. Durno to National Hospital Association, thereupon marked Plaintiff's Identification No. 2045.)

(Letter dated July 20, 1942, Dr. O. J. Halboth to Ralph Furrer, National Hospital Association, with attached correspondence, thereupon marked Plaintiff's Identification No. 2046.)

(Photostatic copy of letter dated November 16, 1948, National Hospital Association to Dr. W. G. Bishop, Medford, Oregon, thereupon marked Plaintiff's Identification No. 2047.)

(Full Coverage Certificate, Southern Oregon Medical Service Association, thereupon marked Plaintiff's Identification No. 2048.)

(Southern Oregon Medical Service Association Schedule of Fees effective July 1, 1941, thereupon marked Plaintiff's Identification No. 2049.)

EDWIN R. DURNO thereupon resumed the stand as a witness on behalf of Defendants and was further examined and testified as follows:

1266 Cross Examination (Continued)

By Mr. Marcus:

Q. Doctor, I gather from your previous testimony that by 1939 you had a good deal of ill will towards the hospital associations apparently, as you saw it, because of their treatment of you, is that right? A. I had no ill will of the hospital associations or towards hospital associations as such, but I refused to do any work for them because I could not see eye to eye with them.

Q. I gather, because you thought they were not dealing with you properly? A. I had finally reached the conclusion that it was in the interest of my patients to cease working for them.

Q. As I understand it, you have already testified the reasons you had ceased to have anything to do with those associations were (1) proper remuneration and (2) because of the necessity of getting authorization, as you put it. A. And (3) always trying to bring the patient up to Portland.

Q. Doctor, I have here a letter written by you to the National Hospital Association, dated February 9, 1939, in which you state "It is not my intention to care for any new patients who come into my office representing themselves to be under the National Hospital Association."

Then you have a P. S.: "Thank you very much for your recent check covering (name of patient) case. The first time I am in Portland we will have a drink of
1267 Scotch together." Whom did you have in mind with that P. S.? A. If you want me to go into that matter—

Q. I am merely asking you whom you had in mind. A. Mr. Bechtold, Sr., of the National Hospital Association, and in order to explain that, what you are inferring, I will have to tell you—

Q. I asked you a question. A. I answered it.

Q. I am about to read another letter and I want to ask you a question based upon this letter.

Mr. Jaureguy: Pardon. This may be technical and I do not mean to be butting in, but these leters have not been offered in evidence.

Mr. Marcus: That is right. They have been shown to you and marked for identification.

Mr. Jaureguy: I do not want to be technical, but I only will agree to your reading them on your agreement that you will offer them in evidence.

Mr. Marcus: I will offer this one, but just as a matter of technicality I suppose it would be better to actually offer them on rebuttal. I have no objection to offering this letter at this time, if it is in accord with the practice. Would the Court prefer that I offer it?

The Court: I don't care.

1268 Mr. Jaureguy: As long as they are going to go in evidence, that is all right with me.

Mr. Marcus:

Q. This is a letter dated July 20, 1942, by Dr. O. J. Halboth of Medford, Oregon, addressed to Mr. Ralph Furrer, care of National Hospital Association, Medford, Oregon.

"Dear Ralph:

"I wish to take opportunity to thank you for your generosity towards me during my practice in Medford. After the war is over and I again am able to be in private practice, I sincerely hope we can enjoy the same pleasant re-

lationship as we have in the past. Thanking you again, I remain, Sincerely yours."

Would you say that this doctor was one of those who were cooperating with the Association and had met with the same treatment you allege you have met with? A. No. Dr. Halboth came to Medford probably ten years after I did and about the time that this difficulty had come to a head.

Q. So that there is a possibility— A. He had not met with the same treatment which had been accorded me.

Q. So that there is a possibility that whatever treatment you were accorded prior to 1939 did not take place— A. No, we had corrected that.

Q. You have never gone back to it, though, have
1269 you? A. No, I have not. I know what would happen.

Q. I want to read another letter and again ask you a question based on that letter.

I may say this letter is marked Plaintiff's Exhibit for Identification 2046, and this one I am reading from is marked Plaintiff's Exhibit for Identification 2047.

This is addressed to Dr. W. G. Bishop, Medical Center Building, Medford, Oregon. It is dated November 16, 1948. It is from the National Hospital Association.

"Dear Doctor:

"At the time you entered military service in 1943 your office mailed to us a number of bills for services you had rendered members of this Association but, as you had previously notified us that you were not accepting payment from the Association, no action was taken on the accounts at that time.

"However, we feel that you are entitled to payment for your services and in appreciation of the cooperation you have given our Medford office since returning from the service, all accounts are being paid and we are enclosing our check for $423.50, which is based on the fees that were in use at the time the services were rendered as per attached statement."

You think that was fair treatment? A. Do you want me to tell you what Bishop told me about that?

1270 Q. I am asking you on the basis of this letter?

A. That is exactly one of the main reasons why we quit working for the National Hospital Association, because of that type of treatment. That money was due Dr. Bishop in 1942, and they did not pay him.

Q. You have heard me read this letter. A. Yes, I have heard.

Mr. Jaureguy: I want to object to the interruption. I think this is responsive to the question.

Mr. Marcus:

Q. You have heard me read "as you had previously notified us that you were not accepting payment from the Association"?

Mr. Jaureguy: I want the witness to proceed with the explanation he was making before Counsel interrupted.

Mr. Marcus: He will have an opportunity to do that. You will have an opportunity to examine this witness on redirect.

Mr. Jaureguy: Your Honor, I would like to have the witness now continue with the answer that he was giving before he was interrupted.

The Court: Go ahead, Doctor. Tell what you know.

A. When Dr. Bishop received this check, he said to me—

Mr. Marcus: Objection, your Honor.

The Court: You be quiet. I told him to go ahead and answer.

Mr. Marcus: I want to have my record made. I
1271 want the record to show my objection to anything that Dr. Bishop told him.

Mr. Jaureguy: Oh, yes, but what the doctor wrote to somebody he can go into?

The Court: You both sit down. You go back over there, Mr. Marcus, and sit down. Go on and make your explanation.

A. Dr. Bishop said to me, "Well, at last I am getting the money which was justly due me in 1942 and 1943. They have at last come to see the error of their ways."

Mr. Marcus:

Q. He never denied, did he, that he had told the National Hospital Association that he was not accepting payments from them? A. I did not go into the matter in detail with him, Mr. Marcus.

Q. You have testified with respect to, let us call it, irritation which was caused by the necessity you were put to of getting authorization. You also testified you were one of the doctors who helped form the Southern Oregon Medi-

cal Service and I believe, during a period of its operation, you were one of the cooperating doctors. Is that not true? A. That is correct.

Q. Was authorization required by your association? A. No, not any more than OPS, just the same; we carried on that procedure.

Q. Doctor, I have here Plaintiff's Exhibit 2048 for Identification, which is a Southern Oregon Medical Service Association ticket, or whatever you may call it, and on the rear of this exhibit this appears:

1272

"Directions to Doctors: Member physicians and surgeons designated by the Association are hereby authorized to treat the employe whose name is written on the reverse side hereof, at the expense of the Association, as their authority may provide. Special work of any kind must be authorized in advance by the Association. The Association will not be responsible for any bills contracted or for any service obtained without authority from the Association, excepting that in emergency cases when services of member doctors cannot be obtained the Association will assume a reasonable charge for first-aid care."

Plaintiff's next exhibit marked for identification is No. 2049, and is the fee schedule of the Southern Oregon Medical Service Association, effective July 1, 1941, and that provides as follows:

"For the sake of economy, the Association is endeavoring to operate with a minimum office personnel. Because of the considerable growth in our business during the past six months, our ability to continue this policy will depend upon the cooperation of the staff and their secretaries. A telephone call to us may straighten out any question with a minimum of confusion in your office. Please remember—"

That is underlined, Doctor.

"—Please remember that the question of whether or not an individual subscriber is entitled to treatment for any certain condition is one which must be passed upon by the Association office, subject, of course, to later scrutiny of the executive committee."

1273

Then we find on the second page, Doctor, with respect to general surgery, that it provides:

"All surgery, excepting emergency, must be authorized in advance."

We find it further provided that with respect to X-rays of specific types authorization is required.

It is true, then, is it not, that the doctors in Medford who were cooperating with your association at that time were not considered trustworthy enough to determine for themselves whether or not care should be given? A. That is untrue.

Q. How do you explain what I have just read? A. Never, as long as I have practiced medicine, have I ever requested ahead of time permission to do any major operative procedure on a patient coming under Southern Oregon Medical Service Association or under the OPS. I have had consultation with my fellow practitioner who is assisting me in the case. If we both felt that the case was necessary to be done, we did it. That, of course, was subjected later, if desirable, or thought necessary or desirable, to the scrutiny of the supervisory board.

Q. Who drew up this fee schedule? A. I think
1274 Mister—

Q. Wait until I finish my question. A. All right.

Q. I am asking you if you know who drew up the treatment requisition and the fee schedule? A. I was trying to tell you. I think that Mr. R. P. Hammond, an attorney, did that.

Q. Was that reviewed by anyone connected with your association? A. I think it was reviewed by the Executive Committee, probably, of the Southern Oregon Medical Service Association.

Q. Were you on that committee? A. I don't think so. I might have been President of the Association and during the period I was President I was on it.

Q. Do you know whether you then reviewed these exhibits I have just read from? A. It has been so long ago I can't tell you. We were always making new fee schedules, different amounts from month to month. As I previously said, things were very much in a turmoil, and we were not getting our money, very much money, and I can't tell you whether I am aware of that particular fee schedule or not. They always had one, but it was changed from time to time.

Q. In the normal course of events they would have been reviewed, wouldn't they? A. I think so. I think that is reasonable.

Q. I call your attention to Plaintiff's Exhibit 196, which is the Oregon Physician's Service basic fee schedule,

1275 February 1, 1943. A. 194—what?

Q. 1943. A. '43.

Q. It has a preparatory statement and this is a part of the statement:

"Initial case reports should be forwarded immediately to OPS so that OPS may protect the doctors by making an early check on coverage."

What do you understand by the "initial case report"? A. I can only answer that by telling you I was in the service from 1942 to 1945. I do not know anything about OPS during those years. I can only answer from November, 1945.

Q. You say you can only answer from November, 1945? A. OPS was formed while I was away and I can only tell you after November, 1945.

1276 Mr. Marcus:

Q. It was formed, you say it was formed while you were away? A. It was formed while I was away in the Army.

Q. Well, Dr. Durno, have you had any, held any other positions other than that of cooperating physician with OPS? A. Will you ask me that again? I didn't quite hear it. I don't hear too well.

Q. Have you held any positions other than that of a cooperating physician with OPS? A. With OPS? No. I haven't.

Q. You were not one of the incorporators? A. No. I was in the Army.

Q. And you were never one of the Trustees? A. Not of the OPS. I don't think so. Now, that is to the best of my ability. I don't think I am. If I was it might have been just when I went in the Army, but I was instrumental in its—

Q. In other words, you may be mistaken? A. Well, yes, I may be mistaken on the OPS, but I am telling you I was away from October 31, 1942 to November 2nd, 1945, and during that period I have no idea what happened to OPS.

Q. Doctor, I want you to state at present whether or not you want this Court to believe that you had no connection with OPS until you got back from the armed services. A. I do not know. I am telling you during that interim

1277 I had nothing to do with OPS. If it was formed prior to my entry into the Army I might have had something to do with it.

Q. Well, I show you Exhibit 473 and ask you whether that refreshes your recollection. A. When was this done? When was this? Oh. Yes, this was January the 11th, 1942, and I appear as one of the primary incorporators of the Oregon Physicians' Service, so I must have been. My memory is refreshed. Now, may I add further that I took no active part in that and that I can't answer any more of your questions than I already have done.

Q. Doctor, do you want us to believe that you have never read any of the literature put out by OPS? A. I didn't ask you to believe that, no.

Q. Have you read some of the literature put out by OPS? A. Why, I would guess that I probably had, and I would guess that probably every doctor has, and a lot of lay people.

Q. Well, Doctor, I call your attention to Government's Exhibit 126, which consists of the operating procedures and schedule of fees of the Oregon Physicians' Service effective February 1, 1948. On page 17 of that exhibit in bold print at the top there appears this: "Reporting OPS cases. In most instances it is impractical for the cooperating physician to determine for himself the extent of OPS liability for any case. This is particularly true where treatment of chronic conditions or elective surgery is concerned. Neither may the cooperating physician ob-
1278 ligate the service plan to the patient, as that is a function of the business office and various supervisory committees. The initial case report is the physician's protection against error in the handling of OPS cases. By regulation of the Board of Directors the attending doctor is required to send to the proper OPS office an initial case report on any case in which it is anticipated that the total cost to OPS will exceed $25." Are you familiar with that, Doctor? A. No, I am not.

Q. Apparently this is one document you have never read? A. One of the many, I suspect.

Q. Now, on page 20 of this same exhibit there appears this: "Types of authorizations. Unlimited authorization: A post card form is sent to the physician simply acknowledging OPS liability for treatment or surgery as requested. "Diagnosis authorization: This notice authorizes the physician to go ahead with diagnostic work on the case. When diagnosis is established an additional report is required.

"Acute phase authorization: This notice obligates OPS for indicated treatment of the acute phase only of an illness."

And then we have listed types of rejections. Are you familiar with that, Doctor? A. No, that is some bureaucratic red tape I never heard about.

Q. Well, having been advised of that would you—

1279 A. I would keep right on doing it. Never to my knowledge have I ever received a post card or anything such as you have just described.

Q. You don't think that requirements of this sort would be occasion for your discontinuing your connection with OPS, is that true? A. Well, I am very happy and satisfied and we seem to be getting along very well.

Q. Doctor, have you had occasion to see any contract entered into between OPS and the subscriber? A. No, I haven't.

Q. Well, I am reading now from Exhibit 132, which is a special coverage medical and hospital agreement between Oregon Physicians' Service and an employer, and that provides in part, "It is particularly agreed and understood that each and every employee covered by this contract shall be entitled to unrestricted choice of available physicians from the OPS list of member physicians in treatment of any illness or injury, excepting that OPS shall retain the right to direct the medical or surgical procedure in every case when in the opinion of OPS such direction is required for the welfare of the patient." Are you familiar with that provision? A. It sounds like a good one. I am not familiar with it because, as I say, I have not read that contract.

Q. You think it is a good provision to have OPS

1280 determine rather than the doctor who is treating the patient— A. Oh, no.

Q. —whether or not a certain procedure should be followed? A. No, no; I am not talking about professional conduct at all.

Q. Doctor, while you were on the Council of the State Society did you have occasion from time to time to report to the Jackson County Medical Society as to the attitude of the State Society with respect to contract practice? A. I, as a representative of Southern Oregon on the Executive Council, I think that I from time to time would report back to my component society of what had taken place at a previous council meeting.

Q. Well, I am referring to Jackson County. A. Well, that is my component society.

Q. Would your answer be Yes then to my question? A. I believe it would.

(Letter by Coos Bay Hospital Association to Oregon Physicians' Service, dated June 18, 1947, so produced, was marked for identification Plaintiff's Exhibit No. 2050;

(Photostatic copy of letter by Coos Bay Hospital Association to Mr. Joe Hicks, so produced, was marked for identification Plaintiff's Exhibit No. 2051;

(Photostatic copy of minutes of meeting of Ad-
1281 visory Committee of Oregon Physicians' Service on March 8, 1948, so produced, was marked for identification Plaintiff's Exhibit No. 2052.)

Mr. Marcus:

Q. Doctor, I am reading from Plaintiff's Exhibit for identification 2050, which is a letter from the Coos Bay Hospital Association to the Oregon Physicians' Service. The letter is dated June 18, 1947. "It has come to my attention that one of your subscribers located now in this area has been refused payment of doctor and hospital services for what appears to be a coverable case. The subscriber I refer to"—and I will leave the name out—"who is under your coverage through the George Aker Group located at Myrtle Creek. The coverable case I refer to is for doctor care and hospitalization for a condition diagnosed as sulfa poisoning caused from the use of nose-drops." Then there is some more with respect to the symptoms. The final paragraph is this: "I know that you will give the above your immediate attention, Willard, and this person will appreciate learning that OPS is going to assume the expense involved for both the above mentioned."

Now, do you think it is proper for a subscriber of Oregon Physicians' Service to have to resort to having another of the affiliated associations write to Oregon Physicians' Service before recovering from the Oregon Physicians'
Service? A. I don't know any of the facts beyond
1282 what you describe. There probably might be many, many mitigating factors involved, and I certainly can't answer that question.

Q. There might also be many mitigating factors with respect to some rejections by the commercial hospital associations, is that not true? A. Very similar to the Sam Lehman case you just got through with.

Mr. Jaureguy: He didn't get through with it. I want to object. I see he is picking up some more to ask this witness what he thinks about what somebody connected with Coos Bay Hospital Association says. I didn't object when he restricted it to Southern Oregon, but he is now way over on the Coast.

Mr. Marcus: This refers to Oregon Physicians' Service.

Mr. Jaureguy: This was a statement made by an official of the Coos Bay Hospital Association. That is the basis—

The Court: You didn't object soon enough.

Mr. Jaureguy: I know. And I was a little premature on the next one.

Mr. Marcus:

Q. Doctor, I have here Plaintiff's Exhibit marked for identification 2051, which is a letter from the manager of the Coos Bay Hospital Association to Mr. Joe Hicks, Manager of the Klamath Medical Service Bureau, Klamath Falls, Oregon.

"Dear Joe: I am in receipt of a statement from A. M. Compton, M. D., for professional services rendered
1283 a (blank), C.B.H.A." —

The Court: Now I will hear your objection.

Mr. Jaureguy: Shall I repeat it?

The Court: Yes. Now I will hear your objection.

Mr. Jaureguy: I want to object on the ground—I will not say improper—I will say a waste of time, for a witness from Medford to comment on the opinions of—

The Court: Objection sustained.

Mr. Marcus: Well, your Honor, with respect to this item I want to show that we have here two affiliated associations with the defendants and that the lay manager, the lay manager of one is writing to a lay manager of the other as to his opinion of a charge rendered by a physician. We have just heard this defendant, this witness, testify at some length at his outrage at what he stated was an attempt by laymen in these commercial associations to tell him what to do.

The Court: Objection sustained.

Mr. Marcus: Your Honor, as I understand, the objection is sustained to my questioning this witness with respect to this document, is that correct?

The Court: That is right.

Mr. Marcus:

Q. Doctor, some of the doctors in Medford treat patients, do they not, who are subscribers of some of the other pre-paid medical organizations other than OPS?

1284 A. I think so.

Q. Such as the Klamath Medical Service Bureau? A. I think so.

(Photostatic copy of letter by the Klamath Medical Service Bureau to Dr. C. I. Drummond, dated February 7, 1944, so produced, was thereupon marked for identification Plaintiff's Exhibit No. 2053.)

Mr. Marcus:

Q. Doctor, Plaintiff's Exhibit marked for identification 2053 is a letter from the Klamath Medical Service Bureau to Dr. C. I. Drummond of Medford, Oregon, and it is dated February 7, 1944. Was Dr. Drummond one of the members of your association? A. Yes, sir, I believe so. Yes, sir.

Q. This letter states, "We note that you prescribed for the above Mr. (blank) on 11-28-43 100 ascorbic acid tablets which prescription was filled and has been paid for by this bureau. We wish to bring to your attention a regulation of this bureau contained in our full coverage medical aid contract to the effect that all necessary medicines will be furnished but that vitamins and liver extracts will not be furnished by the bureau. Had we noticed this particular 'Rx' before payment was made we would have requested the druggist to collect personally from Mr. (blank); however, inasmuch as payment has been made we are asking that in the future you advise Mr. (blank), or any of our other subscribers for whom you feel

1285 it is necessary to prescribe an 'Rx' of this kind, that the Bureau according to our contract is not liable for the payment of the same."

Now, Doctor, have you ever treated subscribers of the Klamath Medical Service Bureau? A. I imagine that I have treated a few.

Q. And have you ever had occasion to receive a letter of this sort? A. I have not, and the medicine angle is entirely removed now. We don't have it any more.

Q. Doctor, it is your view, is it not, that doctors in Oregon should not associate in any way with the so-called commercial hospital associations? A. That is their own business.

Q. It's their own business? Doctor, do you know Dr. Sweeney? A. Yes.

Q. Would you consider him an ethical physician? A. Are you asking me to pass on my fellow practitioner?

Q. I am asking you whether you consider him an ethical practitioner? A. Is that a fair question?

Mr. Jaureguy: Well, your Honor, I will object—

Mr. Marcus: May I ask that the witness be instructed to answer the question?

The Court: I will instruct him that he does not
1286 have to answer; contrariwise.

A. I refuse to answer.

Mr. Marcus:

Q. I show you Exhibit 22 and ask whether you were one of the persons who signed that document as it was filed with the Jackson County Medical Society. A. Yes.

Q. And who is the other person who signed? A. I don't know, I can't tell you.

Q. If I suggest that it was Dr. Hayes, would that refresh your recollection? A. I am not sure enough so that I could answer. If Dr. Hayes appears, you ask him.

Q. This document recites, "Secretary, Jackson County Medical Society, Jackson County, Oregon. Dear Doctor: The Oregon State Medical Society has recently reminded the County Medical Societies of this state that it is the primary duty of the County Medical Societies to handle proceedings of its own members. The undersigned have information which leads them to believe that Dr. Charles T. Sweeney of Medford has violated the principles of medical ethics in that, one, he disposes of his professional attainments for services to lay organizations contrary to the established code of medical ethics; two, the organization with which he is associated, (a) prevents or attempts to prevent the free choice of physicians, (b) acts as a
third party between his patient and physician;
1287 three, the results created by (a) and (b) are contrary to the policies of the Oregon State Medical Society and the ultimate effect is bad for the people as a whole.

"We request that this matter be brought to the attention of the Board of Censors of the Jackson County Medical Society."

"If the above doctor is found guilty of these allegations we ask that this letter and the action taken by the Board of

Censors be officially reported to the Oregon State Medical Society, the American Medical Association, and the American College of Surgeons."

Mr. Jaureguy: You mean you didn't intend to ask this witness anything about that when you read that?

Mr. Marcus: I did. I asked if he signed it.

The Court: Don't read any more letters. Don't take up time like that. I read all those.

Mr. Marcus: This was not signed—the copy we put in was not signed.

The Court: You didn't need to read it. He agreed he signed it.

Redirect Examination

By Mr. Jaureguy:

Q. Were those charges ever acted on by the Jackson County Medical Society? A. They were not.

1288 Q. That was dated sometime in 1940, February 13th, 1940. Subsequent to 1941 has there been any discrimination against any doctor in Jackson County by any medical society because of any association by the doctor with any commercial hospital plan?

Mr. Marcus: Objection on the ground that he is not in a position to know.

The Court: Overruled.

A. To the best of my knowledge there has been no discrimination against any doctor practicing in Jackson County at any time.

Mr. Jaureguy:

Q. Dr. Sweeney you will recall was President of the Oregon State Medical Society. A. Dr. Sweeney was President of the Oregon State Medical Society at about that same time, and Dr. Sweeney was a member in good standing of the Jackson County Medical Society, and he also had free and unlimited access to both of our hospitals.

Q. At all times? A. At all times.

Q. And I think Dr. Sweeney testified that when he had completed fifty years of practice the physicians and other citizens put on a big celebration for him. A. I believe they did.

Q. Do you recall that? A. I don't—

Q. And do you recall whether Dr. Sweeney's presi-

1289 dency of the Oregon State Medical Society was largely promoted by Southern Oregon physicians? A. Well, I am not in the political side of medicine, and I wasn't there at the meeting where he was elected, but I would suspect that somebody from Southern Oregon had something to do with it.

Mr. Marcus: I object to this on the grounds it is purely hearsay.

The Court: It is stricken.

Mr. Jaureguy:

Q. Now, you are talking about fee schedules. If a member of the OPS comes into your office for an initial office call what charge is made to OPS? A. $5.

Q. And if a member of the National or Industrial Hospital Associations come in for an initial office call what charge do you make to the patient? A. Well, I previously pointed out that every patient that comes into my office is treated as a private patient. We do follow the fee schedule as outlined by the Oregon Physicians' Service, and consequently there is a flat fee payment of $5 for the first office call. Anybody else that comes in pays according to the type of service rendered. The average fee for a first-office call of any private patient coming into a doctor's office in Medford is, I believe, $3.

1290 Q. And is that what you charge regardless—I mean even though they have tickets? A. If I felt that I gave them $3 worth of service I would charge $3, and that I would say is my average charge for a private patient. If I did something else, if they commanded, if they needed a complete physical examination, I would charge $5.

Q. Now, on cross examination, counsel brought out that when you were on the panel of the National and Industrial very often the telephone discussions about your proceeding with the operation or other procedure was based on whether there was coverage. But was that always true? A. No.

Q. Other times what was it based on? A. It might be whether they thought the patient needed what I wanted to have done.

Q. When the Southern Oregon Medical Association was organized was it intended that it be a permanent organization? A. It certainly was.

Q. And for any other purpose than what it appeared

to be, that is to render service to the patient? A. My primary purpose in endeavoring to form this organization was to offer free, good medical service to the people of Southern Oregon, unrestricted from any third party.

Q. All right, now, another question: You tried to make an explanation to that drink of Scotch postscript.

1291 Do you recall what that was? A. I objected to a facetious remark that I made to Mr. Bechtold, Sr.; because it doesn't tell only a very tiny part of that whole story which was one of my main grievances against the National Hospital Association. I have a file of letters that are an inch thick regarding the Sam Lehman case, and if you would like to I can tell you in a few brief words the case and why I objected to it.

Q. Will you do that?

Mr. Marcus: Objection, your Honor, that it is not the best evidence. He just stated he had correspondence.

The Court: Go ahead. Be sure it is brief.

A. I will do my best. It is a long case. The Sam Lehman case was of three and a half years duration. The man suffered a severe compound fracture of his lower arm. I cleaned it up, I put pins in it, and I took care of him a long time. He got a non-union. I then did an inlay graft which failed to take. I then did an onlay graft which failed to take. I repeatedly X-rayed the arm and I repeatedly put on new casts. I submitted a bill for $387, I believe, and after a long period of argument I finally got back a check for $265, which is all they would pay. Then this was a contract case supervised by the State Industrial Accident Commission; in other words, the National Hospital handled the case and paid the bill but it was an industrial injury. So, after several examinations

1292 by an orthopedic man from the State Industrial Accident Commission offices, he recommended that I do yet another operation, which I did.

I then continued to X-ray and cast the arm and I later sent them a bill for $151 to which I got a letter back saying that they would pay $100 but they had already paid enough, that they wouldn't pay any more. I became very incensed at that. I said, "Now, that is all I can stand. I am not going to stand any more of this business, and before I institute any proceedings necessary to collect what is fair and just to me I am perfectly willing that we submit this bill to the State Industrial Accident Commission and let them decide whether or not my fee is a just fee." They came back with

a letter saying okeh. I then sent a letter to the State Industrial Accident Commission outlining the course and what had happened, and in return I got a letter and Mr. Bechtold got a letter instructing him to pay me in full, saying that they thought my charges had been very fair.

So the letter that you read about the "little drink of Scotch" was, Mr. Bechtold said to me, "Well, you win. Come up to Portland and I will buy you a bottle of Scotch." That is the story.

The Court: Did he do it?

A. No, I never received it.

Mr. Jaureguy: That will be all.

1293 Recross Examination

By Mr. Marcus:

Q. Can you name any specific instances at all where you were told by someone, either in National or in Industrial, that you should not proceed with the case because they differed with you as to diagnosis? A. Yes, sir.

Q. Could you name them? A. I can't give you the patients' names but I can tell you of the case. I think I can find the patients' name because I operated on the patient. One person—

Q. You are not able at present to give any names? A. I can tell you specifically of a case in which I called the Industrial up. Mr. Kirk was not in. The patient had an acute abdomen—

Q. Give us the time when this happened? A. It is in this letter.

Q. What letter? A. It is in the file that I have got around here somewhere. I wrote a letter to the State Medical Society concerning three cases.

The Court: Recess.

(Recess.)

Mr. Marcus:

Q. I was asking you whether you could recall any specific instance where your diagnosis had been rejected by
1294 National or Industrial? A. And I was saying that I had a patient who came under Industrial Hospital coverage. I wrote a letter to the State Medical Society

complaining about the conduct of the case, on April 29, 1940, I think it was.

Q. Was that the date of your letter? A. That is the date I wrote the letter, so the case preceded that a little while. This was a case of a man coming in with a very definite acute abdomen, having an acute appendicitis. I tried to get hold of Mr. Kirk at 4:45 in the afternoon, here in Portland, to get permission to operate on him, and I couldn't do it. I had a consultation and all the laboratory work done and, inasmuch as it represented an emergency, I went ahead and did it. At 2:00 A.M. in the morning, before I had a chance to tell Mr. Kirk—I mean before I had a chance to tell Mr. Kirk, Mr. Kirk called me up at 2:00 A. M. in the morning and asked me about the case and told me that he did not want me to operate on the case until in the morning, and then I could do another blood count, and if the blood count was up it was all right for me to go ahead and operate.

I then told Mr. Kirk that I had already operated on the man. That is the sort of thing which we had to contend with.

Q. Were you paid for that operation? A. I think so.

Q. I won't ask you the name of the patient—

1295 A. I wouldn't remember it anyway. I don't remember it. I could find out for you.

Q. Could you find out and let me know so we can check on that? A. Yes, because I don't know whether I was paid, either. I am assuming that I was paid.

Q. I am asking you to kindly check and let us know. A. I can find out who the patient was.

Mr. Marcus: That is all.

Mr. Jaureguy: That is all.

(Witness excused.)

1296 Dr. E. B. Bossatti was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is Dr. E. B. Bossatti? A. Yes.

Q. Where do you live? A. Dallas, Oregon.

Q. How long have you been there? You have been there how long, Doctor? A. Since 1932.

Q. What is your occupation? A. Physician and surgeon.

Q. You have practiced how long? A. Seventeen years.

Q. Has that all been in Dallas? A. Except for the time I was interning at the County Hospital.

Q. Have you had any association in any way with either the National Hospital Association or the Industrial Hospital Association?

Mr. Marcus: Your Honor, I have the same objection. I suppose I should make it initially with each witness and then have it a continuing objection.

The Court: The testimony is admitted subject to
1297 the objection.

A. Yes, I have. I have been paid by them for various cases since the time I have been in Dallas.

Mr. Jaureguy:

Q. You have been in Dallas since when? A. Since 1932, seventeen years.

Q. Has that continued up to the present time? A. Continuous, yes.

Q. At the present time do you take tickets of these organizations? A. Yes, sir, I do.

Q. And send them these bills? A. Yes. I send a bill on their ticket and am eventually paid for the service.

Q. Do you know what the practice of other doctors in Polk County is? A. Well, those in Dallas, it is the same. They all accept tickets.

Mr. Marcus: Your Honor, I object, unless it can be shown he has personal knowledge.

Mr. Jaureguy: I asked him whether he knew.

The Court: Answer the question.

Mr. Jaureguy:

Q. Do you know what the practice of other doctors in Polk County is? A. Yes, I do. They do accept them.

Q. Are you on the staff of any hospitals? A. Yes, on the Dallas Hospital and also the Salem General
1298 Hospital.

Q. Are you a member of any medical society? A. Yes, of the Marion-Polk County Society as well as the State Medical Society.

Q. Has any question ever been raised regarding your membership, either on the staffs of these hospitals, or the Medical Society because of your work for the hospital associations? A. Nothing has ever been said to me about that.

Q. Has there ever been any coercion or disciplinary proceedings of any kind that you know of? A. None at all.

Q. Have you ever held office in the Marion-Polk County Medical Society? A. Yes, in 1948 I was president of our county society.

Q. That society is a defendant in this case, and are you the individual who was served with summons and complaint in this case? A. Yes, I was. I don't remember the date, but I was served.

Q. Do they have any method of dividing up the offices between Marion County doctors and Polk County doctors? A. Yes. Most of the doctors in the society are from Marion County and mostly from Salem, so about every three or four years one of the officers is chosen from outside of Salem.

Q. That includes Polk County, I suppose? A. Includes Polk County, yes, because it is a bi-county society.

1299 Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. How long have you been taking tickets of these associations? A. Well, since I moved to Dallas.

Q. And about when was that? A. In 1932.

Q. Did you take tickets during the period 1944 and 1945, too? A. Yes, I believe I did.

Q. There was no time at all during this period that you did not take tickets? A. I don't recall of any, no.

Q. You have been satisfied with the treatment accorded you by these associations?

Mr. Jaureguy: Objected to as not within the scope of the direct examination.

The Court: He may answer.

A. What is that question?

Mr. Marcus:

Q. You have been satisfied with the treatment accorded you? A. So far they have paid according to our fees.

Mr. Marcus: That is all.
Mr. Jaureguy: That is all.

(Witness excused.)

1300 ROSWELL S. WALTZ was thereupon produced as a witness on behalf of Defendants and, being first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Jaureguy:

Q. Your name is Roswell S. Waltz, doctor? A. That is true.

Q. You live where, Doctor? A. Forest Grove.

Q. That is in Washington County? A. In Washington County.

Q. What is your occupation? A. Physician and surgeon.

Q. How long have you been practicing your profession? A. Twenty-three and a half years.

Q. Where has that been? A. All in Forest Grove.

Q. All in Washington County? A. Yes.

Q. Have you ever worked for any commercial hospital associations?

Mr. Marcus: The same objection as with respect to Dr. Durno, your Honor.

The Court: The testimony will be admitted subject to the objection.

Mr. Jaureguy:

Q. Have you ever treated patients for commercial
1301 hospital associations? A. Yes.

Q. For which associations? A. Both National Hospital Association and Industrial Hospital Association.

Q. Can you tell us during what period or periods of time that would cover? A. I began treating for both hospital associations when I first went to Forest Grove and continued until about 1941, and then for about a period of two years I did not render my bills directly to the hospital associations, and then about 1943 I again began treating for both hospital associations, and have until present, until the present time.

Q. That is, you have been taking tickets and sending them bills? A. That is right.

Q. That has continued from 1942 to the present time? A. That is right.

Q. Prior to 1941 you did the same thing? A. That is right.

Q. In the fall of 1941 did you cease—do I understand that in the fall of 1941 you ceased taking tickets and treated them as private patients? A. I can't remember the exact date, but there was a time along about 1940 or 1941 when I ceased taking tickets, over a period of approximately
1302 a year and a half or two years. I can't recall exactly how long.

Q. There are in evidence here two letters written by you in December, 1941, one to the Oregon-American Lumber Corporation and one to the Carnation Lumber Company. Would that fix the time in your mind? A. Yes. Those were written in the fall of 1941. Then it was in 1942 and 1943 that I did not take tickets.

Q. Will you just explain the circumstances that led up to your refusal to take tickets during that time? A. Well, that goes back quite a ways. In the first place, I believe in prepaid medicine. I think that is the logical way for patients to take care of their bills, especially those with modest incomes—their medical bills—and, so, when I first went to Forest Grove I did work for both Industrial and National hospital associations.

At that time there was no alternative for those people, if they wanted prepaid medicine, and then eventually the Multnomah Hospital Association was formed and under their contract we were allowed to take care of a patient just as we would a private patient; in other words, the patient and I could talk over the case and if I felt that a specialist was indicated we could decide between us what specialist we wanted to use, and send the patient to that specialist, and he would examine the case and report back to me as to his findings, as to his advice, and as to treatment.
1303 That was not true under the lay-owned hospital associations. In other words, when I felt a patient needed a specialist's care I could not call the doctor; I could not choose my physician; I could not choose the specialist that I wanted him to go to. I had to call the National Hospital Association and talk with the office manager or with the president, if it were the National or, if it were the Industrial, I had to call Mr. Kirk, the manager, and suggest that I had a patient that I felt should see a

specialist and they would say "All right, you send the specialist down to our headquarters—"

Q. "Send the specialist down"? A. Excuse me. "Send the patient down to our headquarters, and we will examine him and choose the person that we think he should see." Then the patient would go down and that is the last I ever heard of the patient. I had no report from the specialist regarding the patient's condition, nor advice as to treatment, and it was rare indeed that a patient came back to me for treatment after being referred to Portland.

I felt that a hospital association that allowed me to take care of a patient just as I would a private patient offered the patient much better service than what we had been accustomed to.

There were other reasons, but perhaps—it all added up into this: In my mind the most important thing was
1304 the welfare of the patient in his contracts with the two different types of medical care; in other words, what was then the Multnomah County Medical Society—the Multnomah County—

Q. Well, there was an organization here that originally was the Multnomah Industrial Health Association. A. That is what I want to say. The Multnomah Industrial Health Association or either the National or Industrial, and it was for that reason that I finally decided that I would foster the use of the Multnomah Industrial Health Association by refusing to take tickets from lay-owned hospital associations.

Q. Prior to that time, however,—tell us to what extent, if at all, you were permitted down in Washington County to perform operations on members of the National or Industrial Hospital Associations? A. Forest Grove is only twenty-three miles from Portland, and it was explained to me by the head of the National Hospital Association that it was much cheaper for them to take care of patients in Portland by their staff members than to allow it to be done in outlying districts, where they would have to pay an additional fee to the doctor, as well as the hospital bill. Consequently, we were not allowed to do any surgery, unless it be an emergency, which could not be moved to Portland, and then only after we had contacted the hospital association and received their permission to do so.

Q. What did you do? Anything besides first-aid
1305 work in those cases? A. Well, there are a lot of fellows that would come in with colds or something

like that, but as far as major work was concerned, there was practically none; just occasionally I was permitted to do a tonsillectomy.

Q. You are speaking of "major work." Does that mean other things besides operations, besides surgery? A. Well, no, I am speaking of major surgery.

Q. All those cases were brought into Portland? A. Yes.

Q. After you stopped taking tickets for a period, I think you said, of a year and a half or so, how did you happen to start in again? A. Well, during the early part of the period after I stopped taking tickets I was a member of a group of doctors who met with committees of the unions, to talk with them about hospital associations and to suggest that they use the Multnomah in preference to Industrial or National, and Mr. Bechtold appeared at one of those meetings, at least one—I recall this particular one—and when I made the point that I had never received a specialist's report on a case which I had referred to Portland, he said, "Well, that is not necessary at all. That can all be changed." That went along for, as I say, a period of a year or so. That went along for a period of a year or a year and a half or two years. I know at that time Dr. Kines was assisting me with my surgery and I would assist
1306 him with his surgery; we worked together, although we were not partners, nor in the same office.

Dr. Kines had not been taking tickets either, and then one day, when we were scrubbing up for surgery, I said to him, "Doctor, are you taking National tickets now?" And he said, "Yes, I have been taking them." He said, "I have been taking them for several months," and I said, "Well, I guess I will, too, and see how things go for a while." I started in taking tickets then, and this particular complaint of mine was at least partially remedied, and so I continued to take tickets up to the present.

Did you ever have any conference with anybody connected with the National Hospital Association about the method of taking care of patients and things of that kind? A. Many times.

Q. Who were they? Were they doctors or were they laymen? A. They were laymen. I never had any contact with any doctor who had anything to do with the running of the hospital association, as far as National was concerned.

Q. Were those conferences in Portland or down in Forest Grove? A. Both.

Q. All with the lay officials, though? A. Yes.

Q. During all of this time has there ever been any
1307 pressure on the part of any medical society to try to get you to refrain from taking tickets of hospital associations? A. None.

Mr. Jaureguy: You may take the witness.

Cross Examination

By Mr. Marcus:

Q. With what medical societies in the state have you been affilated? A. In the State?

Q. Yes. A. Oregon State Medical Society and the Washington County Medical Society.

Q. You were a member of the latter society in 1940 and 1941? A. Of the last society?

Q. Yes, the Washington County Society? A. I can't just be sure of that because there was a time when we in Washington County discontinued meetings, and I don't recall exactly when it was. There was a period there I would say of- I am guessing at it—maybe two or three years that we had no meetings at all, and whether I was officially a member of the Washington County Medical Society at that time or not I do not know.

Q. Well, let us put it this way: When did you first become a member? About when? A. In 1926.

1308 Q. And, to the best of your knowledge, you never resigned from that society? A. I am sorry.

Q. You never resigned nor were you expelled from that society? A. No.

Q. Were you ever an officer of the Washington County Medical Society? A. Yes. I have been a president.

Q. During what period? A. Well, I was president about three or four years ago, and I think I was president back in the '30s, also.

Q. Have you ever held any other office with that society? A. I have been a delegate to the state convention.

Q. About when was that, do you recall? A. I was a delegate in 1949 and either 1946 or 1947.

Q. Were you ever on any of the committees of the Washington County Medical Society? A. Yes, various committees.

Q. And at various times during this period? A. What is that?

Q. And at various times during this period? A. Yes.